

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

26-1

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,872

UNITED STEELWORKERS OF AMERICA, AFL-CIO,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 23,010

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

FLORIDA MACHINE & FOUNDRY COMPANY and
FLECO CORPORATION,
Respondent.

On Petition for Review and an Application for Enforcement of an
Order of the National Labor Relations Board

BRIEF

For the United Steelworkers of America, AFL-CIO

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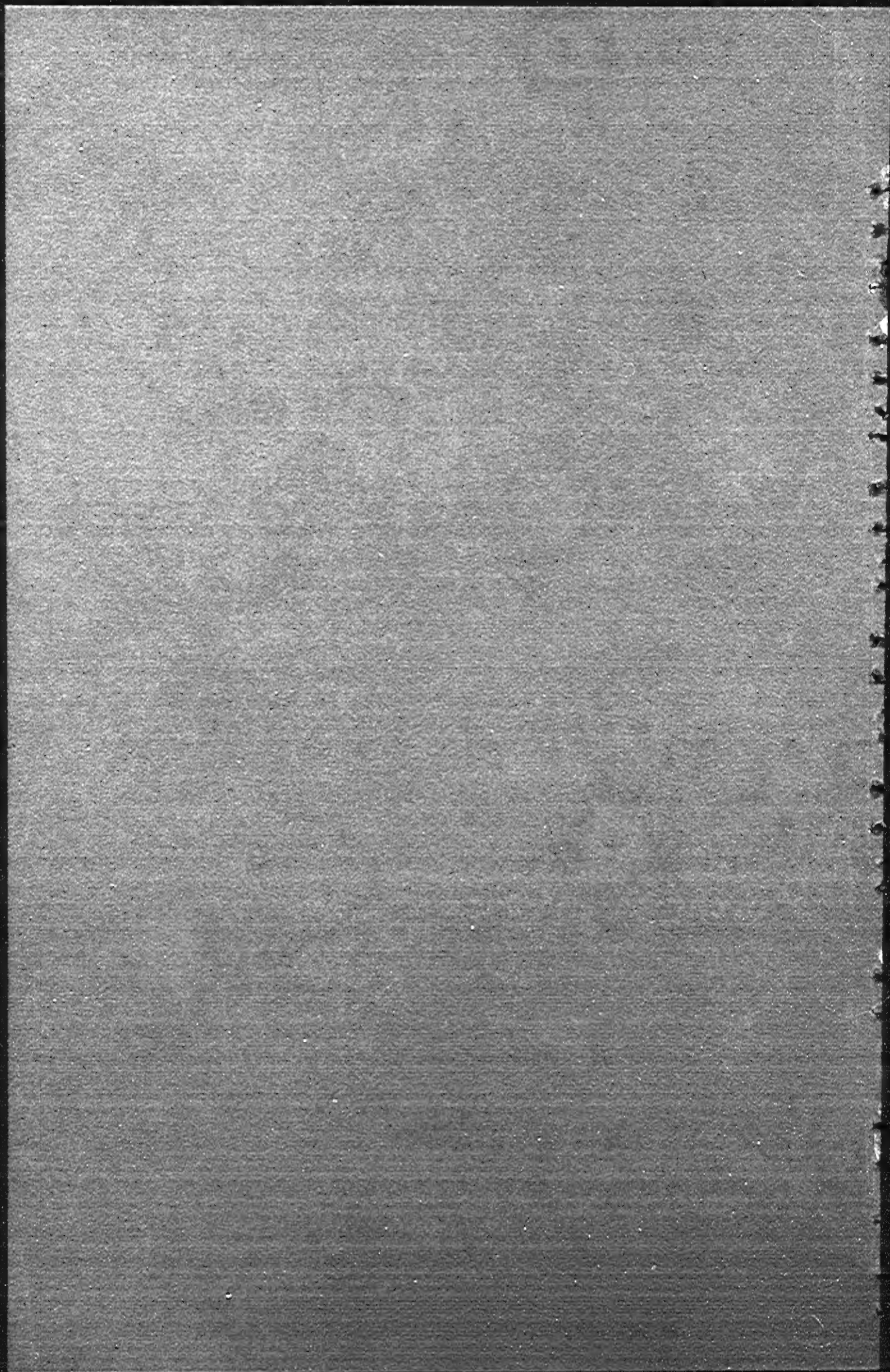


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BRIEF

For the United Steelworkers of America, AFL-CIO

STATEMENT OF ISSUE PRESENTED

The case presents the following issue:

- (1) Whether the Board erred in concluding that an employer who notifies unfair labor practice strikers that they are "terminated" does not incur liability

for back pay from the date of such notification but only from such later date as the employee applies for reinstatement.

JURISDICTIONAL STATEMENT

This case is before the Court on the Union's Petition to Review and the Board's Petition to Enforce a final order of the National Labor Relations Board. In No. 22,872 the United Steelworkers of America, AFL-CIO (hereinafter called the "Union" or the "Steelworkers") seeks review of that portion of the Board's decision and order unfavorable to it. The Court has jurisdiction under Sections 10(e) and 10(f) of the National Labor Relations Act, 29 U. S. C., § 160(e) and (f).

STATEMENT OF POINTS

1. The Board correctly held that the strike was an unfair labor practice strike.
2. The Board incorrectly held that the unfair labor practice strikers were not entitled to back pay from the date they received notice of termination.

STATEMENT OF THE CASE

The Steelworkers won a Board conducted election and was certified as the bargaining representative on October 3, 1966.

Florida Machine & Foundry Company and Fleco Corporation (hereinafter called the "Employer" or the "Company") were guilty of serious violations of the Act both at and away from the bargaining table. Prior to the election the Employer foreshadowed its later misconduct by boasting that it would never sign a contract with the union. At the bargaining table the Employer advanced proposals which, if accepted, would have rendered the Union unable to represent its members. The Trial Examiner found that the Employer insisted on a no-strike clause while simultaneously refusing to agree to arbitration. For these and other reasons the Trial Examiner found that the Employer engaged in surface bargaining and that the strike which began on February 28, 1967, was caused by the Employer's unfair labor practices (A. 48).

On March 16 and 17 the Employer sent letters to about 160 strikers stating that they had been replaced and hence they were "terminated" (A. 72).¹

The strike was unsuccessful and on July 10, 1967, the union notified the company that it was directing all striking members to return to work (A. 65).

The Trial Examiner found that the letters of March 16 and 17 did terminate the strikers' employment but reasoned that the letters merely "confirmed what the strikers

¹ "Trial Examiner: Well, Mr. Mattson, perhaps—I take it then, what the Company's actual procedure was, was that if a striker was replaced, the Company then considered that his employment with the Company had terminated?

"Mr. Bowden: That is correct."

must have already known—that the Company had substantially succeeded in filling their jobs” (A. 47). Although the termination of the strikers was held to be a violation of the Act the Trial Examiner held that back pay would not begin until the strikers offered to return to work.

The Union took exceptions to the Trial Examiner’s ruling that backpay did not begin upon receipt of the termination letter. The Board overruled the exception, Member Brown dissenting (A. 60).² 174 NLRB NO. 170. The

² Member Brown’s dissent refers to *Sea-Way Distributing, Inc.*, *supra*, where he argued that:

“My sole disagreement with the majority stems from their failure to provide an appropriate remedy for the discharges which they find to have been committed. Thus, while finding Respondent’s discharge of its employees to be unlawful and even though Respondent has had notice of the instant charges since June 28, 1962, the majority nevertheless now withholds a backpay remedy until such time as these unlawfully discharged employees apply for reinstatement. Presumably, the majority’s position is founded on the premise that backpay awards are generally inappropriate for periods during which employees voluntarily withhold their labor. I, too, accept this premise. The problem in this case, however, is that one cannot really be certain whether the employees continued their strike against the Respondent’s threats and unlawful refusal to bargain despite their discharge or whether their reason for not making formal application for work was that their Employer, by discharging them, had unmistakably impressed on them the futility of applying for reinstatement. There would, of course, be no question on this score if the employees had applied for reinstatement and were rejected, and one might say that a showing of such application is not an unduly burdensome condition for establishing abandonment of the strike’s original objectives. On the other hand, however, it is no more burdensome to require the employer to advise his victimized employees that although he discharged them, he did not really mean it.

“It is for ‘the tortfeasor,’ said Judge Hand, ‘to disentangle the consequences’ of his unfair labor practices, and in a situation similar to the instant case the Board early applied this sound equitable construction in *Gulf Public Service Co.*, 18 NLRB 562, 586-587, *enfd.* 116 F. 2d 852 (C. A. 5):

“Inasmuch as the respondent discharged the strikers . . . , it is impossible to ascertain when the strikers

majority's rationale for withholding backpay is elucidated in *Sea-way Distributing, Inc.*, 143 NLRB 460, wherein it was said that:

"The General Counsel excepts to the Trial Examiner's failure to recommend backpay for the striking employees from the date of their discharge. We find no merit in the General Counsel's position. The employees were on strike at the time of their discharge. As they had not abandoned the strike and applied for reinstatement, we can see no justification for awarding them backpay while they were withholding their services irrespective of the fact that they were discharged . . ."

would have abandoned the strike and returned to work in the absence of the respondent's action in discharging them. Had the respondent not discharged the strikers, their back pay would have commenced from the date when they applied for work. However, by discharging them, the respondent made it useless for the strikers to apply for their jobs. Since the uncertainty is caused by the respondent's illegal act in discharging the strikers because of their union activity, we will indulge in no presumption as to how long the strike might otherwise have lasted. Accordingly, in order to restore the status quo as nearly as possible under the circumstances, our orders shall provide for back pay for the discharged employees listed in Appendix A from the date of the discharge. . . .

"The restoration of the status quo in the circumstances of the present case requires, no less than in *Gulf Public Service*, that the discharged employees be made whole for their backpay losses suffered from the date of their unlawful discharge. I dissent to my colleagues' failure to grant the General Counsel's request for such remedy." Page 461.

SUMMARY OF ARGUMENT

An Employer Who Discharges Unfair Labor Practice Strikers Incurs Backpay Liability From the Date of Termination, Not the Date on Which the Employee Requests Reinstatement.

Section 2(3) of the Act provides that strikers continue to be employees of the company until they have obtained substantially equivalent employment elsewhere.

An employer who terminates strikers violates Section 8(a) (3) of the Act whether they are economic strikers or unfair labor practice strikers.

The Board's normal remedy for discharged employees is to award backpay from the date of discharge to the date the employer offers re-employment. The Board's departure from their customary remedy is arbitrary, based on speculation, and allows a violation to go unremedied thus contravening Section 10(c) of the Act. Indeed, it was entirely fortuitous that the strikers offered themselves for reinstatement at all since they had been terminated and the Employer never informed the strikers to the contrary.

ARGUMENT

Section 2(3) of the Act³ provides that a striker continues to be an employee so long as he has not obtained substantially equivalent employment elsewhere. Section 8(a)(3) of the Act⁴ protects employees from discharge or discrimination because of union membership or activity.

An employer incurs backpay liability to a discriminatorily discharged employee from "the date of discrimination and ending with the date of offer of reinstatement." *F. W. Woolworth Company*, 90 NLRB 289 (1950). *Isis Plumbing and Heating Co.*, 138 NLRB 716. The offer of reinstatement must be made by the employer, not the employee. *N. L. R. B. v. Poultrymen's Service Corp.*, 138 F. 2d 204 (3rd Cir. 1943). Only where the employee is lawfully discharged or laid off for lack of work is there an obligation on the employee's part to make known his willingness to work. Absent a strike the Board has never required a discriminatee to request reinstatement as a condition to entitlement to backpay. *NLRB v. Bituminous Material & Supply Co.*, 124 NLRB 945, 281 F. 2d 365 (8th Cir. 1960); *Idaho Potato Growers v. N. L. R. B.*, 48 NLRB 1084, 144 F. 2d 295, 304-305 (9th Cir. 1944). *N. L. R. B. v. Coats & Clark, Inc.*, 241 F. 2d 556 (5th Cir. 1957). The burden of offering reinstatement is on the employer—the wrongdoer—not the discriminatee. *N. L. R. B. v. Kolpin Bros. Co.*, 379 F. 2d 488 (7th Cir. 1967).

³ "The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, . . ." 29 U. S. C., § 151(3).

⁴ 29 U. S. C., § 159(a) (3).

No justification exists for withholding the usual remedy from unfair labor practice strikers and, indeed, there is every good reason why the employer should incur liability. First of all, the news that strikers have been terminated can only have a destructive effect on the strikers' morale. The discharge of all strikers is a devastating strike-breaking tactic. To withhold the backpay remedy allows the employer to enjoy with impunity the fruits of his illegality.

No striker, be he economic or otherwise, can be terminated, save for misconduct. *N. L. R. B. v. Thayer Co.*, 213 F. 2d 748 (1st Cir. 1962); *UAW v. NLRB (Kohler Co.)*, 300 F. 2d 699, cert. den. 370 U. S. 911. This is true of economic strikers even after so-called permanent replacements are hired. *The Laidlaw Corporation*, 171 NLRB No. 175, enf'd. 71 LRRM 3054 (7th Cir. 1969); *N. L. R. B. v. Fleetwood Trailer*, 389 U. S. 375 (1967). The Employer cannot justify termination of the strikers regardless of whether their object was economic or was to protest unfair labor practices. *N. L. R. B. v. Washington Aluminum Co.*, 370 U. S. 9; *N. L. R. B. v. Erie Resistor Corp.*, 373 U. S. 221 (1963); *The Laidlaw Corporation*, *supra*.

The Board's poorly reasoned rationale for withholding backpay is that the strikers did not apply for reinstatement until a later date. However, it was entirely fortuitous that the strikers at Florida Machine applied for reinstatement at all since their employment had been terminated. In a similar case Member Fanning dissenting in *Abbott Publishing Company*, 139 NLRB at 1330, footnote 4, stated that:

" . . . The Act does not protect an employee from loss of wages as the result of a strike even though

the strike was caused by an unfair labor practice. An employee who prefers concerted activity to the status of a 'strikebreaker' cannot sup at both tables. He cannot be unavailable for work to put economic pressure on his employer to rectify a wrong and at the same time receive full pay for the job from which he has voluntarily absented himself."

Unlike the above case, no striker at Florida Machine supped at more than one table. No striker, following the termination letter "voluntarily absented himself" from work. The Employer's violation kept the strikers at an empty table.

Section 7 of the Act secures the right of employees to engage in self-organization, collective bargaining and other concerted activities. These rights necessarily include the right to strike in protest against the employer's unfair labor practices. *N. L. R. B. v. Mackay Radio & T. V. Co.*, 304 U. S. 333; *Collins Baking Co. v. N. L. R. B.*, 193 F. 2d 483 (5th Cir. 1951). Where the employer's illegality is sufficiently serious in many instances the union can only survive by striking. By withholding their services the strikers hope to force the employer to obey the law and to recognize their rights. This is a critical juncture in the employee's struggle to establish a union. It cannot be emphasized enough that the employees are engaged in an attempt to require the employer to stop violating the law.⁵ Surely, this is an enterprise which

⁵ The remedies for violations of the Act are so extraordinarily weak as to actually invite violations. The inadequacy of present remedies has been the subject of much comment. Graham, *How Effective Is the National Labor Relations Board?* 48 Minn. L. Rev. 1009 (1964); *The Need for Creative Orders Under Section 10(c) of the National Labor Relations Act*, 112 U. Pa. L. Rev. 69.

merits the fullest support from the agency whose business it is to enforce the law. Instead, the Board chooses to smooth over a serious violation, reasoning that the discharge merely confirmed what the strikers already knew. To the contrary the strikers knew only that hopefully they would lose no rights by striking. Instead they stand in a less favorable position than had they declined to strike.

In *Phelps Dodge Corporation v. N. L. R. B.*, 313 U. S. 177, 195, the Court, in commenting on the effectuation of the policy of the Act said that:

" . . . According to the experience revealed by the Board's decisions, the effectuation of this important policy generally requires not only compensation for the loss of wages but also offers of employment to the victims of discrimination. Only thus can there be a restoration of the situation, as nearly as possible, to that which would have obtained but for the illegal discrimination . . . "

But for the misconduct of Florida Machine and Foundry there never would have been a strike. The employees were forced to strike. They willingly faced the perils that all strikers face but it is unthinkable that they must absorb the consequences of the Employer's patently unlawful discharge.

It is simply incorrect to conclude that the termination letter had no effect on the strikers' course of conduct. Strike breaking techniques such as this can only cause further destruction to the hopes of the strikers. The employer was in effect delivering an ultimatum to the strikers to either abandon the strike or be fired which conduct the Board has consistently held to be a violation. *We Painters, Inc.*, 176 NLRB No. 140 (1969); *Southwest-*

ern Pipe, Inc., 179 NLRB No. 52 (1969). Striking is a lonely and risky undertaking. The employer holds the upper hand and, if the Board is upheld in this regard, can discharge his employees with impunity. To uphold the Board would be to "sanction a most effective way of defeating the right of self-organization." *Phelps-Dodge Corp. v. N. L. R. B.*, *supra*, at p. 193. The Employer cannot show that the letters had no effect on the strikers (merely confirming what they already knew). As Judge Learned Hand so well stated:

"We have assumed hitherto that the strike here in question was only for the purpose of enforcing the union's power to negotiate for all the men. That is not true; there had been a wage dispute, and, the men's inability to get at the truth of the Elmira business was another cause. It is of course possible that the parties might have split over wages, or over the Elmira plant, even if the respondent had negotiated with the Joint Board. But since the refusal was at least one cause of the strike, and was a tort—a 'subtraction'—it rested upon the tort-feasor to disentangle the consequences for which it was chargeable from those from which it was immune . . ."

The Board's withholding of the backpay remedy is based on pure speculation. In any event Section 10 (c) of the Act, 29 U. S. C., § 160(c), expressly requires the Board to issue a remedial order when it finds a violation:

"If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor

practice, and to take such affirmative action [etc.]" (Emphasis supplied).

This is not the language of discretion. It does not authorize the Board to find a violation and nonetheless withhold the remedy. If there were any doubt on this score, it is eliminated by language appearing later in Section 10(c), specifying the circumstances in which the Board may dismiss a complaint:

"If upon the preponderance of testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint." (Emphasis supplied.)

Thus, Section 10(c) leaves no middle-ground. Unfair labor practices "shall" be remedied; complaints may be dismissed only when the Board finds no violation.

This Court recently expressly held that Section 10(c) requires the Board to issue a remedial order when a violation is found. *International Woodworkers v. NLRB*, *supra*, 380 F. 2d 628 (D. C. Cir. 1967). Emphasizing Section 10(c)'s direction that the Board "shall issue" a remedial order, this Court declared: "We think these words mean what they say, and that that meaning, in terms of Congressional purpose, is unmistakable." The Court set aside the Board's dismissal of the complaint, and remanded the case to the Board.

CONCLUSION

It follows that, if the Company's conduct is violative of Section 8(a)(3), the Board must issue a remedial order. The Board cannot withhold the backpay remedy any

more than it could refuse to decide the allegations of the complaint on the ground that no remedial order would issue even if a violation were found. **United Steelworkers of America v. NLRB** (Wagner Ind. Products Co.), 386 F. 2d 981 (D. C. Cir. 1967).

Respectfully submitted

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Certificate of Service

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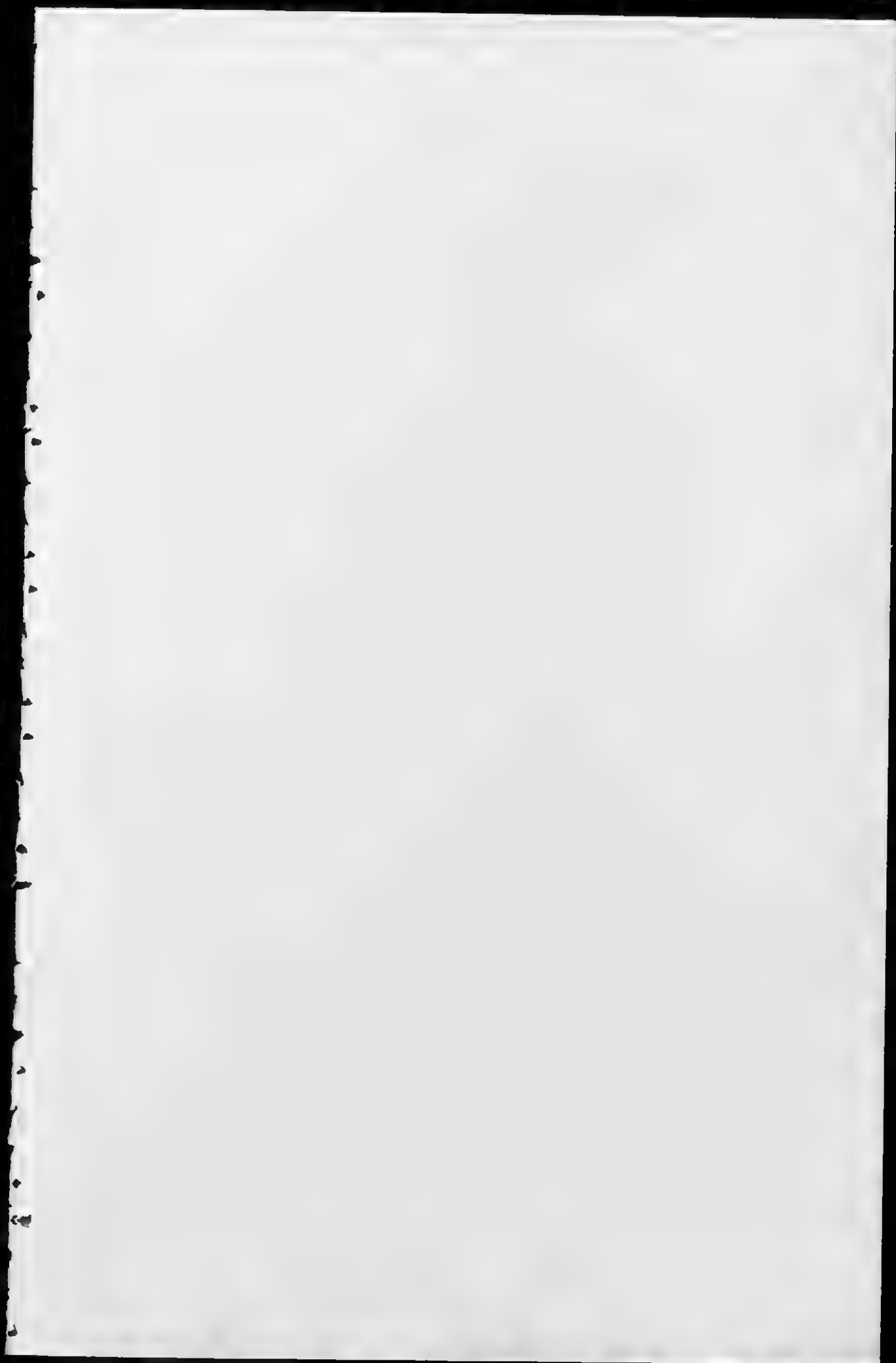
APPENDIX

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United States of America
Before the National Labor Relations Board
Region 12

Florida Machine & Foundry Com- pany and Fleco Corporation	}	Case No.
and		12-CA-3831
United Steelworkers of America, AFL-CIO		12-CA-3915(1-3)

**CHRONOLOGICAL LIST OF RELEVANT
DOCKET ENTRIES**

Date	Proceedings
4-24-67	Charge filed in Case No. 12-CA-3831.
7-18-67	Charge filed in Case No. 12-CA-3915.
7-26-67	Regional Director's Complaint and Notice of Hearing, dated.
7-31-67	Charge filed in Case No. 12-CA-3915-2.
8- 1-67	Company's Answer to Complaint, dated.
8-22-67	Regional Director's Order Rescheduling Hearing, dated.
9-25-67	Regional Director's Order Rescheduling Hearing, dated.
10- 3-67	Amended Charge filed in Case No. 12-CA-3915-1.
10- 5-67	Amended Charge filed in Case No. 12-CA-3915-2.
10-13-67	Charge filed in Case No. 12-CA-3915-3.

- 10-30-67 Regional Director's order consolidating cases and amended consolidated complaint and notice of hearing, dated.
 - 11- 2-67 Company's answer to complaint, dated.
 - 11- 4-67 Regional Director's order rescheduling hearing, dated.
 - 11-28-67 General Counsel's motion to make answer more responsive and specific, dated.
 - 11-28-67 Regional Director's order referring motion to make answer more responsive and specific to Trial Examiner for ruling, dated.
 - 1- 2-68 Trial Examiner's order granting General Counsel's motion to make answer more responsive and specific, dated.
 - 1- 9-68 Company's amended answer, dated.
 - 1-23-68 Hearing opened.
 - 1-25-68 Hearing closed.
 - 2-23-68 Company's motion to dismiss, dated.
 - 4-29-68 Trial Examiner's decision, issued.
 - 5-20-68 Petitioner's exceptions to Trial Examiner's decision, received.
 - 5-28-68 General Counsel's exceptions to Trial Examiner's decision, received.
 - 5-28-68 Company's exceptions to Trial Examiner's decision, received.
 - 3-13-69 Decision and order issued by the National Labor Relations Board.
-

COMPLAINT AND NOTICE OF HEARING

(Dated July 26, 1967)

It having been charged by United Steelworkers of America, AFL-CIO, herein called the Union, that Florida Machine & Foundry Company and Fleco Corporation, herein called the Respondent, has engaged in and is engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U. S. C., Sec. 151, *et seq.*, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director for Region 12, pursuant to Section 10 (b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended, hereby issues this complaint and notice of hearing and alleges as follows:

1

The charge was filed by the Union on April 24, 1967, and a copy thereof was duly served upon Respondent by registered mail on or about April 25, 1967.

2

(a) Respondent, Florida Machine & Foundry Company and Fleco Corporation is, and at all times material herein has been, a single integrated enterprise engaged in the business of manufacturing machinery parts at its plants in Jacksonville, Florida.

(b) During the last 12 months, Respondent, in the course and conduct of its business operations, shipped products valued in excess of \$50,000 directly to points outside the State of Florida.

(c) Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

3

The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2 (5) of the Act.

4

At all times material herein, the following-named persons occupied positions set opposite their respective names, and have been and are now agents of Respondent acting on its behalf, and are supervisors within the meaning of Section 2 (11) of the Act.

Franklin Russell	President
Thomas Madison	Vice President
George Peacock	Plant Superintendent
Luke Morgan	Plant Foreman
Frazier Rhoden	Plant Foreman

5

All production and maintenance employees, including truckdrivers and warehousemen, employed by Florida Machine & Foundry Company and Fleco Corporation at Jacksonville, Florida; excluding office clerical employees, draftsmen, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

6

On or about September 22 and September 23, 1966, a majority of the employees of Respondent in the unit described above in paragraph 5, by a secret ballot election conducted under the supervision of the Regional Director of Region 12, National Labor Relations Board, designated and selected the Union as their exclusive representative for purposes of collective bargaining with Respondent, and

on or about October 3, 1966, said Regional Director certified that the Union was the exclusive collective-bargaining representative of the employees in said unit.

7

At all times since October 3, 1966, and continuing to date, the Union has been the representative for the purposes of collective bargaining of the employees in the unit described above in paragraph 5, and, by virtue of Section 9 (a) of the Act, has been and is now the exclusive representative of all the employees in said unit for the purposes of collective bargaining, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

8

On or about October 25, 1966, and continuing to date, the Union has requested and is requesting Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment as the exclusive collective-bargaining representative of all the employees of Respondent in the unit described above in paragraph 5.

9

Commencing on or about October 25, 1966, and at all times thereafter, Respondent did refuse and continues to refuse to bargain collectively with the Union, notwithstanding that the Union is the duly designated exclusive collective-bargaining representative of the employees as described above in paragraph 5.

10

By the acts described above in paragraph 9, Respondent did refuse to bargain collectively, and is refusing to bargain collectively with the exclusive collective-bargaining

representative of its employees in the unit described in paragraph 5 above, and thereby did engage in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the Act.

Please Take Notice that on the 18th day of September 1967, at 9:30 a. m., EDST, in Room 278, Federal Building, 400 W. Bay Street, Jacksonville, Florida, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Statement of Standard Procedure in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and 4 copies of an answer to said complaint within 10 days from service thereof and that unless it does so, all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board. Respondent shall immediately serve a copy of the answer on each of the other parties, as required by the above sections of the Rules.

Dated at Tampa, Florida, this 26th day of July 1967.

Harold A. Boire, Regional Director
National Labor Relations Board
Region 12
706 Federal Building
500 Zack Street
Tampa, Florida 33602

(Seal)

ANSWER

(Dated August 1, 1967)

Comes now the Respondents and for answer to the Bill of Complaint filed herein, thereto answering says:

1. That it admits the allegations as contained in Paragraphs 1, 2, 3, 4, 5, 6 and 7 of said Complaint.

2. For answer to Paragraph 8, Respondents show that it has met with the union upon request and has continued to meet with the union upon request, and has bargained in good faith in respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

3. That in reference to Paragraph 9 and 10, Respondents deny each and every material allegation therein.

Dated at Jacksonville, Florida, this 1st day of August, 1967.

HAMILTON & BOWDEN

By O. R. T. BOWDEN

Attorneys for Respondents

Address of Counsel:

1056 Hendricks Avenue
Jacksonville, Florida 32207

**ORDER CONSOLIDATING CASES AND AMENDED
CONSOLIDATED COMPLAINT AND
NOTICE OF HEARING**

(Dated October 30, 1967)

Complaint and Notice of Hearing having issued in Case No. 12-CA-3831 on July 26, 1967; and

It having been further charged in Case No. 12-CA-3915 (1-3) by United Steelworkers of America, AFL-CIO, herein called the Union, that Florida Machine & Foundry Company and Fleco Corporation, herein called Respondent, has engaged in and is engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U. S. C., Sec. 151, *et seq.*, herein called the Act, and

The undersigned Regional Director for Region 12, acting on behalf of the General Counsel of the National Labor Relations Board, herein called the Board, having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary cost or delay,

Hereby Orders, pursuant to Section 102.33 of the Board's Rules and Regulations, Series 8, as amended, that the above cases be, and they hereby are, consolidated.

Said cases having been consolidated for hearing, the General Counsel of the Board, on behalf of the Board, by the undersigned Regional Director for Region 12, pursuant to Section 10 (b) of the Act and the Board's Rules and Regulations, Series 8, Sections 102.15 and 102.17 hereby issues this amended consolidated complaint and notice of hearing, and alleges as follows:

1

(a) The original charge in Case No. 12-CA-3831 was filed by the Union on April 24, 1967, and a copy thereof was duly served upon Respondent by registered mail on or about April 25, 1967.

(b) The charge and amended charge in Case No. 12-CA-3831-1, were filed by the Union on July 18, and October 3, 1967, respectively, and copies thereof were duly served on Respondent by registered mail on or about July 21, and October 5, 1967, respectively.

(c) The charge and amended charge in Case No. 12-CA-3931-2, were filed by the Union on July 31, and October 5, 1967, respectively and copies thereof were duly served on Respondent by registered mail on or about August 2, and October 9, 1967, respectively.

(d) The charge in Case No. 12-CA-3931-3, was filed by the Union on October 13, 1967, and a copy thereof was duly served on Respondent by registered mail on or about October 16, 1967.

2

(a) Respondent, Florida Machine & Foundry Company and Fleco Corporation is, and at all times material herein has been, a single integrated enterprise engaged in the business of manufacturing machinery parts at its plants in Jacksonville, Florida.

(b) During the last 12 months, Respondent, in the course and conduct of its business operations, shipped products valued in excess of \$50,000 directly to points outside the State of Florida.

(c) Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

3

The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2 (5) of the Act.

4

At all times material herein, the following-named persons occupied positions set opposite their respective names, and have been and are now agents of Respondent acting on its behalf, and are supervisors within the meaning of Section 2 (11) of the Act.

Franklin Russell	President
Thomas Madison	Vice President
Thomas Peacock	Vice President
George Peacock	Plant Superintendent
Luke Morgan	Plant Foreman
Frazier Rhoden	Plant Foreman

5

All production and maintenance employees, including truck drivers and warehousemen, employed by Florida Machine & Foundry Company and Fleco Corporation at Jacksonville, Florida; excluding office clerical employees, draftsmen, profesional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

6

On or about September 22, and September 23, 1966, a majority of the employees of Respondent in the unit described above in paragraph 5, by a secret ballot election conducted under the supervision of the Regional Director of Region 12, National Labor Relations Board, designated and selected the Union as their exclusive representative for purposes of collective bargaining with Respondent, and on or about October 3, 1966, said Regional Director certified that the Union was the exclusive collective-bargaining representative of the employees in said unit.

7

At all times since October 3, 1966, and continuing to date, the Union has been the representative for the purposes of collective bargaining of the employees in the unit described above in paragraph 5, and, by virtue of Section 9 (a) of the Act, has been and is now the exclusive representative of all the employees in said unit for the

purposes of collective bargaining, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

8

On or about October 25, 1966, and continuing to date, the Union has requested and is requesting Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment as the exclusive collective-bargaining representative of all the employees of Respondent in the unit described above in paragraph 5.

9

Commencing on or about October 25, 1966, and at all times thereafter, Respondent did refuse and continues to refuse to bargain collectively with the Union, notwithstanding that the Union is the duly designated exclusive collective-bargaining representative of the employees as described above in paragraph 5.

10

On or about February 28, 1967, certain employees of Respondent employed at Jacksonville, Florida, plants, ceased work concertedly and went out on strike.

11

The strike described above in paragraph 10 was caused by the unfair labor practices of Respondent described above in paragraph 9, and/or was prolonged by the unfair labor practices described below in paragraphs 12, 13, and 14.

12

On or about March 1, 1967, at its Jacksonville, Florida, plant, Respondent by its officers, agents and representa-

tives, more particularly Vice President Thomas Peacock, promised some of its employees a 10 cent per hour wage increase because they had refrained from joining in the strike referred to above in paragraph 10.

13

On or about March 16, 1967, and thereafter, Respondent by its officers, agents, and representatives, sent individual written notices to its employees who were engaged in the strike referred to above in paragraph 10, informing them that they had been replaced and that their employment with Respondent had been terminated.

14

About the middle of March 1967, Respondent, by its officers, agents, and representatives, advised some of its employees who had engaged in the strike referred to above in paragraph 10, and who were seeking reinstatement to their former jobs, that Respondent would rehire them, but only as new employees with a resultant loss of seniority and other previously held rights and privileges.

15

On or about the dates set opposite their respective names, the Respondent's employees named in Appendix A, attached hereto and made a part hereof, who had engaged in the strike referred to above in paragraphs 10 and 11, made unconditional offers to return to their former or substantially equivalent positions of employment.

16

On or about July 9, 1967, the employees employed by Respondent at the Jacksonville, plants, who had engaged

in the strike referred to above in paragraphs 10 and 11, including those strikers specifically named in Appendix A, through the Union, made a telegraphic unconditional offer to return to their former or substantially equivalent positions of employment.

17

On or about the dates set opposite their respective names in Appendix A, and at all times since, Respondent has failed and refused, and continues to fail and refuse, to reinstate said employees to their former or substantially equivalent positions of employment.

18

On or about July 9, 1967, and at all times since, Respondent has failed and refused and continues to fail and refuse to reinstate to their former or substantially equivalent positions of employment, its employees who made unconditional offers to return to work through the Union as set forth above in paragraph 16.

19

Respondent terminated the employment of its employees as set forth above in paragraph 13, and did fail and refuse and continues to fail and refuse to reinstate its employees as set forth above in paragraphs 17 and 18, for the reasons that said employees had joined or assisted the Union, or engaged in other concerted activities for the purposes of collective bargaining or mutual aid or protection and/or had participated in the strike described above in paragraphs 10 and 11.

20

By the acts described above in paragraph 9, Respondent did refuse to bargain collectively, and is refusing to

bargain collectively with the exclusive collective-bargaining representative of its employees in the unit described in paragraph 5 above, and thereby did engage in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (5) of the Act.

21

By the acts described above in paragraphs 9, 12, 13, 14, 17, 18, and 19, and by each of said acts, Respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, and did thereby engage in, and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

22

By the acts described above in paragraphs 13, 14, 17, 18, and for the reasons alleged in paragraph 19, and by each of said acts, Respondent did discriminate, and is discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and Respondent thereby did engage in, and is engaging in, unfair labor practices within the meaning of section 8 (a) (3) of the Act.

23

The activities of Respondent described above in paragraphs 12, 13, 14, 17, 18, 19, 20, 21, and 22, occurring in connection with the operations of Respondent described above in paragraph 2, have a close, intimate and substantial relations to trade, traffic and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

The acts of Respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8 (a) (1), (3) and (5), and Section 2 (6) and (7) of the Act.

Please Take Notice that on the 27th day of November, 1967, at 9:30 a. m. EST, in Room 278, Federal Building, 400 W. Bay Street, Jacksonville, Florida, a consolidated hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above consolidated amended complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB 4668, Statement of Standard Procedure in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and 4 copies of an answer to said consolidated amended complaint within 10 days from service thereof and that unless it does so, all of the allegations in the consolidated amended complaint shall be deemed to be admitted to be true and may be so found by the Board. Respondent shall immediately serve a copy of the answer on each of the other parties, as required by the above sections of the Rules.

Dated at Tampa, Florida, this 30th day of October, 1967.

HAROLD A. BOIRE, Regional Director
National Labor Relations Board, Region 12
706 Federal Office Building
500 Zack Street, Tampa, Florida 33602

(Seal)

Appendix A

Name of Employee	On Or About
Billy B. Allen	July 12, 1967
George Badger	April 1967
Samuel J. Baxter	July 10, 1967
Roy R. Benge	July 10, 1967
Willie Boggs	July 10, 1967
Adell D. Booth	July 11, 1967
Robert A. Britt	July 11, 1967
Alexander Brown, Sr.	July 10, 1967
Eddie Brown	July 11, 1967
Ronald Brown	July 10, 1967
Walter L. Brown	July 10, 1967
Melvin Cannon, Jr.	March 16, 1967
Camilon E. Causey	July 10, 1967
Alex Chance	July 10, 1967
Richard Christie	July 24, 1967
Horace M. Clark	July 11, 1967
Avery Cobb	July 13, 1967
Lorenza Cross	July 14, 1967
Kenneth A. Cummings	July 10, 1967
Benjamin Daniels	July 24, 1967
Joseph Dasher	July 31, 1967
William F. Davis	July 11, 1967
John Henry Dove	July 10, 1967
Van Driggers	July 10, 1967
Lephus Felton	July 11, 1967
Willie Felton	July 11, 1967
Alpheus Fountain	August 1, 1967
Jay Lynn Fudge	July 10, 1967
Willie Gamble	July 10, 1967
Oscar Lee Gates	July 10, 1967
Edward N. Gauldin	July 23, 1967
Sylvester Gillyard	July 10, 1967
Thomas A. Gordon	July 10, 1967

Name of Employee	On Or About
Vogie Girtman	July 12, 1967
Edward Green	July 10, 1967
Carthur Gunder	July 11, 1967
John W. Handley	June and July 10, 1967
Willis Harrell	July 10, 1967
Alonzo Harris	July 11, 1967
Jimmy Lee Henderson	July 13, 1967
Arthur Hendley, Jr.	July 10, 1967
Carl L. Hilliard	March 15, 1967
Ralph H. Hodges	March 15, 1967
Lennie Noah Howard	April and July, 1967
Jessie L. Hunter	July 10, 1967
Edward Jackson	March 16, 1967
McArthur Jackson	July 12, 1967
Percy Jackson	April 15, 1967
Willie Jackson	July 14, 1967
Earnest Jenkins	April 1, 1967
Richard S. Johnson	August 7, 1967
Freddie Lee Jones	July 20, 1967
Clement King	May 1967
James A. Kitchens	March 16, 1967
Thomas Lewis	July 10, 1967
William James Loyd	July 10, 1967
George F. Loznicka, Jr.	May 30, 1967
John Edward Mack	July 10, 1967
Charles A. Martin	March 15 and July 11, 1967
Isaac McClary	September 10, 1967
Raymond W. Miller	March 15, 1967
Arthur Willard Mincey	July 10, 1967
Malichi Mines, Jr.	July 10, 1967
Roy Mobley	July 10, 1967
Isiah Mosley	July 11, 1967
Robert Mungin	July 10, 1967
F. G. McCanless	July 10, 1967

Name of Employee	On Or About
Walter Lee McCloud	July 11, 1967
Pressie James Nelson	July 10, 1967
James Newton, Jr.	July 10, 1967
Dewey T. Peoples	June 15, 1967
John Perry	July 11, 1967
Merlin A. Ponce	March 15, 1967
A. Y. Purdy	March 14, 1967
Ora Reddick	July 30, 1967
Luther B. Reid, Jr.	July 22, 1967
Henry Lee Rivers	July 10, 1967
Charles Robinson	July 10, 1967
Howard David Robinson, Jr.	July 10, 1967
Joseph Robinson	July 10, 1967
Robert Lee Sapp	July 11, 1967
Thomas Seniors	July 10, 1967
Grover Seymore	July 11, 1967
James A. Shanks	July 10, 1967
Edward Sheppard	July 10, 1967
John R. Shivar, Jr.	August 17, 1967
Joe L. Singleton	July 10, 1967
Charlie Smith	July 10, 1967
Dan Smith	August 1, 1967
Walter Lee Smith	July 10, 1967
Johnnie Snead	March 9, 1967
J. E. Sorrells	March 15, 1967
Cecil Lee Stills	July 24, 1967
Ben Stoke	July 19, 1967
Tenley Sweat	July 10, 1967
Edward Terrell	July 10, 1967
George Thomas	July 10, 1967
Marion Thomas	July 10, 1967
Ronald E. Thomas	July 10, 1967
James O. Vason	July 10, 1967
Nazarine Waters	July 10, 1967
Eugene Waye	April 1967

Name of Employee	On Or About
John A. Wells	July 14, 1967
Glenn Wesley	July 10, 1967
James C. Withers	April 17, 1967
Joseph Woodard	July 10, 1967
Herbert Wright	July 10, 1967
Earl C. Wyman	April 1967

ANSWER

(Dated November 2, 1967)

Comes now the Respondents and for answer to the Bill of Complaint filed herein, thereto answering says:

1. That it admits the allegations as contained in Paragraphs 1, 2, 3, 4, 5, 6, 7, 10, 13 and 14 of said Complaint.
2. For answer to Paragraph 8, Respondents show that it has met with the union upon request and has continued to meet with the union upon request, and has bargained in good faith in respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.
3. That in reference to Paragraphs 9, 11, 12, 17, 18, 19, 20, 21, 22, 23 and 24, Respondents deny each and every material allegation therein.
4. In reference to Paragraph 15, Respondents deny that all employees listed in Appendix A of the Complaint made unconditional offers to return to their former or substantially equivalent positions of employment.
5. In reference to Paragraph 16 of said Complaint, Respondents show that by telegram dated July 9, 1967, the

union advised "The United Steelworkers of America has directed all striking members at Florida Machine and Foundry Company and Fleco Corporation to return to work as soon as possible at 8:00 A. M. Monday, July 10, 1967." That said telegram originated from the union rather than individual employees.

Dated at Jacksonville, Florida, this 2nd day of November, 1967.

HAMILTON & BOWDEN

By O. R. T. BOWDEN

Attorneys for Respondents

AMENDED ANSWER

(Dated January 9, 1968)

Comes now the Respondents and pursuant to the Trial Examiner's Order dated January 2, 1968 amends its Answer to the Amended Consolidated Complaint by stating:

1. In reference to Paragraph 15 of the Complaint the Respondents deny that the following individuals named in Appendix A of the Complaint made unconditional offers to return to their former or substantially equivalent positions of employment on or about the dates set opposite their respective names in the Appendix:

George Badger
Samuel J. Baxter
Alexander Brown, Sr.
Melvin Cannon, Jr.
Camilon E. Causey
Benjamin Daniels
Joseph Dasher
Thomas A. Gordon

John W. Handley
Carl L. Hilliard
Ralph H. Hodges
Lennie Noah Howard
Edward Jackson
Willie Jackson
Earnest Jenkins
Freddie Lee Jones

Clement King	Ora Reddick
James A. Kitchens	Luther B. Reid, Jr.
William James Loyd	Joseph Robinson
George F. Loznicka, Jr.	Johnnie Snead
Charles A. Martin	J. E. Sorrels
Isaac McClary	Cecil Lee Stills
Raymond W. Miller	Ben Stokes
Isiah Mosley	Eugene Waye
Dewey T. Peoples	James C. Withers
Merlin A. Ponce	Earl C. Wyman
A. Y. Purdy	

2. That as to the other allegations contained in Paragraph 15 the Respondents admit that the individuals named in Appendix A who are not listed above made unconditional offers to return to their former or substantially equivalent positions of employment on or about the dates set opposite their respective names in the Appendix.

Dated at Jacksonville, Florida, this 9th day of January, 1968.

HAMILTON & BOWDEN
By CHARLES F. HENLEY, JR.
Attorneys for Respondents

TXD-269-68

Jacksonville, Fla.

United States of America
Before the National Labor Relations Board
Division of Trial Examiners
Washington, D. C.

Florida Machine & Foundry Company and Fleco Cor- poration and United Steelworkers of America, AFL-CIO	}	Cases Nos. 12-CA-3831 12-CA-3915 (1-3)
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Arthur R. Mattson, Jr., Esq., Tampa, Fla., for the General Counsel.

O. R. T. Bowden and Charles Henley, Esqs. (Hamilton & Bowden), Jacksonville, Fla., for the Company.

William C. McCall, Orlando, Fla., and William T. Edwards, Tampa, Fla., for the Union.

TRIAL EXAMINER'S DECISION

(Issued April 29, 1968)

STATEMENT OF THE CASE

MELVIN POLLACK, Trial Examiner: This proceeding was heard in Jacksonville, Florida, on January 23-25, 1968, pursuant to an amended consolidated complaint issued on October 30, 1967, and amended at the hearing, upon charges filed on various dates in April, July and October 1967, by the United Steelworkers of America, AFL-CIO, herein called the Union. The principal alle-

gation of the complaint is that Respondent Florida Machine & Foundry Company and Fleco Corporation, herein called the Company, violated Section 8 (a) (1), (3) and (5) of the National Labor Relations Act, as amended, by refusing to bargain in good faith with the Union over the terms of a collective bargaining contract and by refusing to reinstate employees who struck in protest against the Company's unlawful conduct. After the close of the hearing, the General Counsel and the Company filed briefs which I have carefully considered.

Upon the entire record, including my observation of the witnesses, I make the following:

FINDINGS AND CONCLUSIONS

I. The Business of the Company

The Company manufactures machinery parts at its plant in Jacksonville, Florida. Its interstate sales during the 12-month period preceding the issuance of the complaint exceeded \$50,000. I find that the Company is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

II. The Labor Organization Involved

United Steelworkers of America, AFL-CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

III. The Unfair Labor Practices

A. The company's pre-election conduct

Pursuant to a representation petition filed by the Union, the Board conducted an election at the Company's plant on September 22 and 23, 1966. About 2 or 3 weeks before the election, the Company's vice presidents, Thomas Madison and Thomas Peacock, interviewed prospective

voters. Alex Chance testified that Madison called him into the production office and asked him if he knew anything about "the fellows . . . trying to get a Union in there." Chance answered "no" and Madison told him to report back "anybody trying to get a Union in here." Chance said he would go so and Madison reminded him that the Company had a bad strike in 1958 and remarked that Chance had "a big family" and could not afford to lose his job.¹ James Kitchens testified that Madison called him into the foundry office, asked him how he felt about the Union, and reminded him about the 1958 strike. Thomas Lewis testified to the same effect. Eddie Brown testified that Madison told him that men "lost their jobs and homes" during the 1958 strike, that if the Union came in now it would cause strikes, and that he and Company President Russell did not want a union. Alexander Brown testified that Madison said that Brown had 5 kids, that Brown had worked 4½ years for the Company, that the Union was trying to get in, and that the Company did not want the Union. Madison asked Brown what he thought about the Union and if he had heard "anybody say anything about it." Brown replied that he was "not for the Union" and that he had not heard anyone talk about the Union. Joe Singleton testified that Madison spoke to him in the "old personnel office." Madison noted that Singleton had been with the Company "quite a while" and had given "no trouble." He inquired if Singleton had gone to union meetings and if he was a member of the Union. Singleton said he had been to a few union meetings but that he was not a union member. Madison asked Singleton if he remembered the 1958 strike and Singleton answered, "Of course." Madison said a lot of men had good jobs but they struck and lost their homes, their automobiles, and

¹ Madison had Chance's personnel file "in front of him" during the interview.

other things. He also said "one thing was sure," that if the Union came in, "we'll never sign a contract."

John Handley and Herbert Wright testified to interviews by Vice President Thomas Peacock. Peacock told Handley that he wanted to talk to him about the Union, that he understood that Handley wanted a better job, and that he would get it "after everything was over." He reminded Handley that he was "not getting any younger," that "according to the record" he had "a big family," and that it was hard to get a job at his age. Peacock spoke to Wright in the warehouse office. He showed Wright his personnel file and said Wright was "a good worker" who "didn't get into any trouble." Peacock asked Wright what he thought about the Union and Wright said he thought it was "a good idea" because it would improve "working conditions and seniority and so forth." Peacock said if the Union won, it would not get a contract because "it was a non-union job." He added that the men "were making good money" and told Wright to get up and leave.²

The Company's officials also spoke to groups of employees about the coming election. Thomas Lewis testified that President Franklin Russell "made a speech out in the front to everybody that day" in which he said the Company did not want a union, that "it could be like it was in '58," and that employees who went "out" would lose their jobs. James Withers testified that Russell spoke to the day shift employees 2 or 3 weeks before the election, that he talked about the 1958 strike, urged the employees to vote "no," and concluded his remarks by saying he was going to say "something that's not lawful for me to say. We won't have a Union." Joe Singleton

² On cross-examination Wright repeated his prior testimony except for Peacock's alleged statement that the Union would not get a contract if it won the Board election.

placed the meeting a week or two before the election. He said Russell spoke about the 1958 strike, promised the employees "a lot of work," and said "this is the way I would vote" as he put an "X" in the "No" box of a ballot-like chart. Charles Martin testified that Russell said among other things that he did not think the employees needed a union and that it was not "a policy of the Company to have one."

Alex Chance testified that about a month before the election, Plant Superintendent George Peacock told the "whole night shift" that he had heard "the boys was trying to get a Union in there" but that it was not a union job and that a union would never be brought in there "as long as he had something to do with the plant." Chance further testified that President Russell spoke to the night shift before the election and said "I'd vote just like this" as he marked "a big, wide piece of paper" with a "No" vote.

Harold Mays testified that Foreman Frazier Rhoden came to his house 2 or 3 weeks before the election, said he understood that Mays was "one of the Union pushers," and, in a discussion about the Union, declared that "the Company would never sign a contract with any union." Lephus Felton testified that about 2 or 3 weeks before the election, Foreman Luke Morgan remarked to him and other employees that he knew how Mr. Russell felt about unions and that he would never sign a contract with the Union.

B. The bargaining negotiations before the strike

The Union won the September 1966 election and was certified on October 3 as the collective-bargaining representative of the Company's production and maintenance employees. The Union submitted a written contract pro-

posal to the Company on October 10. The first bargaining session occurred on November 28.³ The parties reviewed the Union's contract and agreed on recognition and union responsibility clauses, a 60-day probationary period for new employees, management control of hours of work, pay for a holiday occurring during an employee's vacation, no cumulative vacations, regular pay plus vacation pay if an employee elected to work during his scheduled vacation if requested to do so by the Company, leaves of absences without loss of seniority for death in the family and serious illness, union use of plant bulletin boards, and submission of discharges to the contract grievance procedure. Company attorney Bowden said he would prepare a counterproposal for the Company. Union representative Edwards urged the Company "to meet as soon as possible, preferably in a succession of days." Bowden said he had a busy schedule and could not meet again until December 19. Edwards objected but Bowden insisted that he had other commitments. The parties agreed to meet again on December 19.

At the December 19 meeting, the Company submitted a complete contract proposal.⁴ The proposal included the following provisions:

ARTICLE II

Management Rights

A. The management of the Company's plants and the direction of its working forces, including the

³ A meeting had been scheduled for October 27, but no bargaining occurred that day as only a single employee-member of the Union's negotiating team appeared. The Company negotiators were present.

⁴ The Company's proposal eliminated or modified agreements reached on November 28, including those on holiday and vacation pay, leaves of absence, union use of bulletin boards, and submission of discharges to the contract grievance procedure.

right to establish new jobs, abolish or change existing jobs, increase or decrease the number of jobs, temporarily or permanently, change materials, processes, products, equipment, to subcontract any of the manufacturing, warehousing and delivery, to discontinue, temporarily or permanently, in whole or in part, its business of manufacturing and delivery, to increase or decrease the number of working hours per day or per week, shall be vested exclusively in the Company and not subject to arbitration. The Company shall be the sole judge of applicants for employment, their qualifications and physical fitness. Subject to the provisions of this Agreement, the Company shall have the right to schedule and assign work to employees to be performed, recall employees who are laid off, demote, suspend, discipline or discharge for any cause not in violation of this Agreement.

B. In addition to items mentioned in Paragraph "A," the Company reserves and retains in full and completely any and all management rights, prerogatives and privileges, except to the extent that such rights, prerogatives and privileges are specifically limited by this Agreement. Such management rights as the Company reserves in Paragraph "A" and "B," and those rights which are not limited by this Agreement, shall not be subject to arbitration if this be provided for by this Agreement.

ARTICLE VII

Grievances

A grievance is defined as a dispute between the Company and its employees over the application, interpretation or alleged violation of a specific provision of this Agreement.

Should an employee have any grievance, an earnest effort shall be made to adjust such grievance immediately in the following manner:

A. **Step No. 1:** Within three (3) days after the occurrence of the thing or event on account of which the employee shall feel aggrieved, such aggrieved employee, accompanied by his steward and the department foreman shall attempt to adjust such grievance.

B. **Step No. 2:** If such grievance is not adjusted under Step No. 1 above within two (2) days after the decision of the department foreman, the employee shall, within said two-day period, if he elects to further pursue the grievance, reduce such grievance to writing, giving all material facts and witnesses, which shall be signed by the aggrieved employee and dated. Such written statement shall immediately be referred to the Business Agent of the Union and Department Manager, who will attempt to adjust the grievance.

C. **Step No. 3:** If such written grievance is not adjusted under Step No. 2 above within five (5) days from its submission to the Department Manager, the aggrieved employee and the Union may refer the matter to a Management designee, who will attempt to adjust such written grievance within ten (10) days from the date of its receipt.

D. Employees are not to leave their jobs for the purpose of investigating, presenting, handling or settling grievances. All such activities are to be done on off time of all employees concerned without pay from the Company. The Company will cooperate in this respect and will make available its representatives at mutually convenient times.

E. Company prerogatives and reserved rights of management shall not be subject to grievance procedure.

F. If time limitations set out in this Article are not observed or waived in writing by both Company and Union, the grievance in which such non-observance occurred shall be considered null and void and at an end.

ARTICLE VIII

Arbitration

Any grievance which remains unsettled after having been fully processed through the grievance procedure pursuant to Article VII may be submitted to arbitration upon the written request of either the Company or the Union, provided such request is made within twenty (20) days after the final decision of the Company and provided further the other party agrees to arbitrate the said grievance.

If the parties cannot agree to arbitrate the dispute, then either party may resort to its economic power under the following terms and conditions:

Ten (10) days after the answer is received denying a request for arbitration, either party may give written notice by registered mail declaring the No-Strike No-Lockout Clause inapplicable to the dispute between the parties as to the subject matter of the grievance only. Such written notice regarding said No-Strike No-Lockout Article shall be effective for a period of thirty (30) days after such notice declaring No-Strike No-Lockout Article inapplicable, as aforesaid, is received by the other party. The giving and receipt of said notice in reference to the No-Strike No-Lockout Article, or the institution of a strike or lockout pursuant thereto, will not in any way change, alter or affect any condition, agreement or requirement of this contract, except as specifically set forth in this Article, and the contract shall remain in full

force and effect for its stated term in all other respects.

If the Union does not call a strike, and the Company does not institute a lockout during the thirty (30) day period following receipt of notice as stated above, then, in that event, the No-Strike, No-Lockout Article automatically becomes effective again on the 31st day following receipt of said 30-day notice until again declared inapplicable under this Agreement or until expiration of this Agreement, whichever occurs first.

If the Union calls a strike or the Company institutes a lockout during the said 30-day period, the No-Strike No-Lockout Article shall continue inapplicable to said strike or lockout so long as said strike or lockout is effective and current. At the conclusion of the strike or lockout, upon agreement of the parties upon the disputed grievance, the No-Strike No-Lockout Article shall automatically become effective again.

Rights of management not specifically limited by this Agreement are hereby reserved by the Company and shall not be subject to arbitration.

ARTICLE XI

No Strike Clause

A. The Union will not cause or engage in or permit its members to cause or engage in, nor will any member of the Union take part in any strike, sit-down, stay-in, slow-down, picketing or sympathy strike in or upon premises or equipment of the Company, or against the Company upon other premises or equipment, or any curtailment, interruption or interference with work of the Company or its agents, servants or employees, nor cause such action to its members or any other person.

B. Any employee participating in any action contrary to this Article may be disciplined by the Company by layoff or discharge in the discretion of the Company.

C. The Company agrees that it will not cause a lock-out of employees during the life of this Agreement. It is understood and agreed that a lockout means a voluntary, complete cessation of operations of the Company to prevent employees from working.

D. For violation of this Article, the parties consent to the entry of a state court consent temporary restraining order without necessary legal notice against the offending party. Before this Section is invoked, the offending party shall be notified immediately of the violation.

E. The parties agree that in the event of a breach of the Union's no-strike promise contained in this Article, such breach shall not be referable to the grievance procedure herein, but shall be the subject of a suit or action in federal or state court at the Company's discretion.

F. If a strike occurs in violation of this Article, the Company shall not be required to discuss the dispute in question, or any other matter or grievance, while such strike is in effect.

ARTICLE XII

Contract Constitutes Entire Agreement of Parties

The parties acknowledge and agree that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter included by law within the area of collective bargaining and that all the understandings and agreements arrived at by the parties after the exercise of

that right and opportunity are set forth in this Agreement. Therefore, the Employer and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right to request or require further collective bargaining, and each agrees that the other shall not be obligated to bargain collectively with respect to any matter or subject not specifically referred to or covered by this Agreement, whether not such matters have been discussed, even though such subjects or matters may not have been within the knowledge or contemplation of either or both parties at the time that they negotiated or signed this Agreement. This Agreement contains the entire contract, understanding, undertaking and agreement of the parties hereto and finally determines and settles all matters of collective bargaining for and during its term, except as may be otherwise specifically provided herein.

The Company's proposal also made its working rules part of the contract, provided for seniority by job classification within a department, and retained its existing practices as to overtime work, insurance,⁵ vacations, and holidays. The proposal noted that job classifications and wage rates were "To Be Negotiated."

The Union accepted with some modifications, the Company's proposals on recognition clause, voluntary union membership and union activity in the plant,⁶ union visi-

⁵ The Company notified its employees on August 3, 1966, that a revised insurance plan expanding hospital, medical, and surgical benefits, and increasing life insurance to \$5,000, had been scheduled to go into effect on August 1, but had been put "on the shelf" because the Union had claimed representative status on August 2.

⁶ Union representative McCall said the Union would agree to the Company's proposals on union membership and activity "as long as we had the check-off provision in the agreement." Bowden said the checkoff "would not bar us from getting a contract."

tation of the plant, a 60-day probationary period for new employees, absenteeism, bulletin boards, production work by supervisors, some leave of absence provisions, a Military clause, washing facilities, and safety equipment. The Company said it would make no wage offer because a wage survey showed that its wages were equal to or better than those paid by other companies in the Jacksonville area. The Union rejected the Company's proposed management rights, Company rules, arbitration, no-strike, and "Entire Agreement" clauses. The parties did not resolve their differences on seniority, grievance procedure, or economic items such as call-in pay, overtime pay, holidays, and vacations.

At the end of the meeting, Bowden said he would check at his office and notify union representative McCall about a date for the next meeting. Bowden did not call McCall, who tried unsuccessfully to reach Bowden before leaving town. A meeting was scheduled for January 6, 1967, when McCall reached Bowden by telephone at his home a few days later.

The parties did not significantly change their bargaining positions at the January 6 meeting.⁷ At the end of the meeting, Attorney Bowden said the Company wanted its insurance representative, Horovitz, at the next meeting and that he would have to work out a meeting date with Horovitz. Staff representative Edwards urged the Company to meet more frequently and said there was no need to wait on Horovitz "as he was just going to be talking about one item, anyhow." The Company insisted that no meeting be scheduled until Horovitz could attend.

⁷ In addition to agreeing to a union grievance committee of 7 rather than 14 members, the Union said it would draft a new seniority provision. The Union dropped its demand for plant-wide seniority but did not accept the Company's proposal for seniority based on departmental job classification. The Company reduced the number of hours to be worked for vacation eligibility from 1,800 to 1,700, the Union asking for 1,500.

The next meeting was held on January 25, 1967. Horovitz explained the Company's insurance and pension plan and left the meeting. The Company offered to increase the daily hospital room rate from \$9 to \$15 a day and, based on a new survey, it also offered to increase the wages of 4 skilled classifications.⁸ The Company accepted a grievance procedure clause drafted by the Union which left the question of compulsory or voluntary arbitration open. The parties' positions otherwise remained unchanged.

Meetings were held before a Federal Mediator on February 7, 13 and 22. At the February 7 meeting, the Union *inter alia* offered to "consider" the Company's no-strike clause if the word "permit" was changed to "authorize," to accept the Company's management rights clause,⁹ and to drop its demand for call-in pay, if the Company would increase wages 22 cents across the board, add a holiday, and increase hospital benefits to \$20 per day, room and board. The Company refused to modify its no-strike clause and turned down the Union's proposals on wages, holidays, and insurance benefits. It offered, however, to increase shift differentials by 2 cents and to give a wage increase of 8 cents across the board. The positions of the parties did not change materially at the meeting on February 13. At the February 22 meeting, the Union insisted *inter alia* on a 20-cent wage increase, the day after Thanksgiving as a holiday, time and a half pay after 8 hours, compulsory arbitration, its no-strike, no-lockout clause, and exclusion of the Company's rules as part of the contract. The Company rejected the Union's demands. At

⁸ The proposed increase applied to about 30 of the 300 employees in the bargaining unit.

⁹ The Union suggested that the clause be modified to provide that the Company would not subcontract work with an object of discriminating against union members. The Company agreed to this modification.

a union meeting on February 26, the members rejected the Company's contract offer and authorized a strike.

C. The strike

The strike began at 9:30 p. m. on February 28, 1967. That night, Plant Superintendent George Peacock told Alexander Brown and Elton Stewart "behind the furnace" that he appreciated their "staying in here and helping me out" and that he was going to give them "a dime raise." Peacock also told four or five employees in the shipping area, including Elijah Fishburne, Johnnie Hall, and Clifford Hall, that the guys who remained in the plant that night would receive a 10-cent an hour raise. The next morning, striker James Withers, a carpenter, was allowed to come into the plant to get some tools "to do some church work." As Withers unlocked his box, Vice President Thomas Peacock suggested that he "take it all" because he would not work there again. On Friday, March 3, Plant Superintendent George Peacock told Alex Chance and one or two other employees who had come to the plant for their paychecks that they were replaced and terminated. Chance was not in fact replaced until March 13, according to a list compiled from the Company's personnel records.

Striker Johnnie Snead, a crane operator, reported to the plant on Monday morning, March 13, and told Superintendent Peacock he wanted to go back to work. Peacock went to the "main office" and, on his return about 45 minutes later, told Snead he had been replaced, but that he "could go upstairs and put in an application and start over as a new man." Snead said, "I'll be damned, after 12 years?" and Peacock said, "That's the way it goes." Snead said he would not accept a job "as a new man" and asked about his checks. Peacock left to get Snead three checks due him. Upon Peacock's return with the checks, James Mulloy, a non-striker, asked him who

was going to run the crane. Peacock said, just a minute." and handed Snead his checks. As Snead was leaving the plant, Foreman Rhoden asked him, "What happened?" Snead replied, "They wanted me to start back as a new man," and Rhoden shook his head.¹⁰ The Company's replacement list shows that six crane operators (Snead, Avery Cobb, Albert Perry, Van Driggers, Howard Robinson, and Albert Purdy) were strikers, that Perry was hired on March 13 as a replacement for Purdy, and that Van Driggers was not replaced until March 15.

On March 15, strikers J. E. Sarrells, Melvin Ponce, Raymond Miller, and Ralph Hodges told Foreman Luke Morgan they wanted to go to work.¹¹ Morgan said they had been replaced and "would have to come back as new employees." As the men "started back out," Personnel Manager Cline told Sarrells that they "could go back to work if [they] filled out the applications."¹² Sarrells returned to the plant 6 weeks later and was hired as a set-up man at his old rate of pay but with "loss of seniority and vacation time."

On March 16 and 17, the Company sent letters to about 160 strikers advising them that they had been permanently replaced and were terminated. The Company thereafter employed strikers only upon personal application at its personnel office and as new employees.

Welder Carl Hillyard asked about his job 3 or 4 weeks after the strike began and was told by one Norman Wilcox, speaking for Foreman Luke Morgan, that Morgan had no job open for him. Hillyard "a little bit" later asked another applicant for employment whether he had

¹⁰ Snead noticed as he entered the plant at 7:30 a. m. that his crane "was parked—there was nobody in it."

¹¹ Sarrells and Ponce were set-up men, and Miller and Hodges were welders.

¹² The Company's striker replacement list shows replacements for these four men before March 15.

been hired by Morgan. This applicant, who was on his way to the personnel office, said he had been hired by Morgan. Hillyard asked him "what he was applying for" and was told "welder."

Machinist George Loznicka asked Plant Superintendent George Peacock for work on May 30, saying that he "heard that if you wanted to go back you'd have to go back as a new man." Peacock said they had "plenty of work" and a place for Loznicka and that his rate of pay would be the same as it was before the strike. He instructed Foreman Grady Ivey to take Loznicka to the personnel office when he came in the next morning to "fill out a application and be photographed." Loznicka later that day decided he did not want to return as a new employee and sent word by a friend to Ivey that he "wouldn't be in."

By telegram dated July 10, the Union advised the Company that it had directed "all striking members . . . to return to work as soon as possible beginning" Monday morning, July 10, that the telegram was "the Union's official notice that all strikers hereby request to return to work," and that the return to work was not conditioned upon any union demand "save that such employees be put to work on the same job each previously held or on a similar job of equivalent pay." The Company thereafter accepted applications from strikers and recalled many of them to work as new employees.

Plant Superintendent George Peacock testified that the Company was short of men in "most job classifications when the strike began, that supervisors and office personnel performed some production work at that time "as an emergency measure," and that this situation continued for the first month of the strike. He further testified that for the first 2 months of the strike "new groups" of employees were brought to the plant by a motor ve-

hicle with "quite a few seats in it—not a big bus." He confirmed that many of those employees had no prior training in the type of work performed at the plant, that they were hired on a 30-day probationary period, that 10 to 15 percent of the new employees turned out to be "unsatisfactory," and that another 10 to 15 percent failed to show up after the first day or two of work.

**D. Bargaining meetings during
and after the strike**

The Company and the Union met before the Federal Mediator on March 14, May 1, and August 7, 1967. No concessions were made by either party at the March 14 meeting. The Union reduced its wage request from 20 cents to 18 cents across the board at the May 1 meeting. At the August 7 meeting, the Union offered concessions with respect to its "Intent and Purposes" clause, inclusion of the Company rules in the contract, insurance, physical examinations, and departmental seniority, and dropped its request for an additional holiday. The Company agreed to change the word "permit" to "authorize" in its no-strike clause. By letter dated August 8, 1967, Edwards notified Attorney Bowden that the Union would accept a 15-cent an hour general wage increase. Edwards asked Bowden for the names, jobs, and rates of pay of the employees currently employed in the bargaining unit, and also asked him for the area surveys on which the Company had based its position on wages during the negotiations.¹³ On August 15, Bowden advised Edwards by letter that the Company "was hesitant to furnish the names of employees" because of the "large number of instances involving violence and intimidation by strikers against employees working." Bowden forwarded with this letter a letter dated June 12, 1967, from

¹³ The Union had initially requested the area survey data by letter dated May 31, 1967.

Vice President Madison which referred to an area wage survey as supporting the Company's proposed wage increases for certain skilled employees. The Union never received any actual area wage survey from the Company.

On October 2, 1967, the Company without notice to the Union put into effect wage increases offered to the Union during the bargaining negotiations.

E. Analysis and conclusions

1. The refusal to bargain

I find upon the entire record that although the Company met with the Union and exchanged contract proposals, it did not bargain in good faith, as required by the Act, that is, "with an open and fair mind, and a sincere purpose to find a basis of agreement touching wages and hours and conditions of labor." *Globe Cotton Mills v. N. L. R. B.*, 103 F. 2d 91, 94 (C. A. 5); *N. L. R. B. v. Herman Sausage Co.*, 275 F. 2d 229, 231-232 (C. A. 5). The record shows:

1. The Company foreshadowed its failure to bargain in good faith when, during the pre-election campaign period, its officers and other management personnel stated to employees that the Company did not want the Union and would not sign a contract with the Union if it did win the election.¹⁴ *Billups Western Petroleum Company*, 169 NLRB No. 147.

2. The Company disregarded its obligation under Section 8 (d) of the Act to meet and negotiate with the

¹⁴ The employee testimony to this effect is quite detailed and mutually corroborative. For this reason, and as the employees otherwise impressed me as reliable witnesses, I have credited their testimony over the testimony of the Company's witnesses where in conflict. Although the conversations and speeches in question occurred more than 6 months before the filing of the charges in this case, they are properly considered under Section 10 (b) of the Act as background against which to assess the later negotiations.

Union with reasonable frequency. At the first bargaining session on November 28, 1966, Union representative Edwards asked for another meeting "as soon as possible" and suggested that the parties meet "preferably in a succession of days." The Company refused to meet again until December 19, because of Attorney Bowden's insistence that he had a busy schedule and other commitments. After the December 17 meeting, Bowden failed to call Union representative McCall, as he had agreed to do, about a date for the next meeting, and a meeting was arranged for January 6, 1967, only when McCall reached Bowden by telephone at his home a few days later. At the January 6 meeting, the Company insisted that no meeting be scheduled until its insurance representative, Horovitz, could attend to explain the Company's insurance and pension plan. It adhered to this position although Union representative Edwards protested that Horovitz would be talking just "about one item."¹⁵ In consequence the next meeting was not held until January 25, 1967.

3. The Company proposed and insisted throughout the negotiations that the Union accept contract clauses which drastically curtailed the Union's representation rights.¹⁶

¹⁵ The Company notified the employees on August 3, 1966, that it had worked out with the insurance company an increase in the hospital room rate from \$9 to \$15 a day, expanded benefits in other areas of coverage (including maternity benefits), and an increase in life insurance to \$5,000. According to the notice, the Company had to place "this new medical program on the shelf" because of the Union's representation claim. Although the Company insisted that negotiations be postponed until Horovitz could be present to explain the insurance and pension plan, it does not appear that Horovitz or any other company representative mentioned the improvements previously worked out with the insurance company. The Company never offered the Union insurance benefits equal to those cited in the August 3 notice to the employees.

¹⁶ Of course, "the Board may not, either directly or indirectly, compel concessions or otherwise sit in judgment on the substantive terms of collective bargaining agreements." *N. L.*

Article II A of its proposed contract, titled "Management Rights," vested in the Company, "not subject to arbitration," the right to establish, abolish or change jobs; to change materials, products, processes, and equipment; to subcontract or discontinue operations; and, "Subject to the provisions of this agreement," the right to schedule and assign work, to recall laid-off employees, and to demote, suspend, discipline, or discharge employees. Article II B further reserved to the Company without recourse to arbitration "any and all management rights, prerogatives and privileges" not "specifically limited" by the contract. Article VII E, Grievances, excluded from the grievance procedure "Company prerogatives and reserved rights of management." Article VIII, Arbitration, similarly excluded reserved management rights from arbitration. Under Article XII, Contract Constitutes Entire Agreement of Parties, the contract settled "all matters of collective bargaining for and during its term" and the parties waived their right to bargain on matters not covered by the contract "even though such subjects or matters may not have been within the knowledge or contemplation of either or both parties at the time they negotiated or signed this Agreement." As the Company included in its proposals no improvements in existing conditions of employment which might compensate the employees for this sweeping relinquishment by the Union of their right to representation, its proffered contract was one which the Union could not possibly justify to the employees and hence frustrated rather than furthered

B. B. v. American National Insurance Co., 343 U. S. 395, 404. However, good faith or its lack is a question of fact as to state of mind, and positions taken at the bargaining table, considered in the context of the whole case, are manifestations of the state of mind with which negotiations are conducted. **N. L. R. B. v. Insurance Agents' International Union**, 361 U. S. 477, 498-499; **N. L. R. B. v. Reed & Prince Mfg. Co.**, 205 F. 2d 131, 139-140 (C. A. 1), cert. den., 346 U. S. 887; **N. L. R. B. v. National Shoes, Inc.**, 208 F. 2d 688, 691-692 (C. A. 2).

collective bargaining.¹⁷ Yet the Company never significantly retreated from its initial bargaining position, so making negotiations an exercise in futility, for without the Company's proposed contract the Union at least retained unimpaired its statutory right to advance consultation and bargaining before the Company could effect changes in the employees' wages, hours, and other conditions of employment.

4. The Company insisted on a stringent no-strike clause and also insisted on voluntary arbitration of grievances. Although the Company's arbitration clause implicitly modified the no-strike clause to permit the Union to strike over a grievance upon 10-day notice after Company denial of a request for arbitration, other provisions in the Company's proposed contract greatly curtailed matters subject to the grievance procedure. Accordingly, the Company as a practical matter was insisting that the Union virtually surrender its right to strike without the usual *quid pro quo* of compulsory arbitration of grievances. *Textile Workers Union v. Lincoln Mills*, 353 U. S. 448, 455; *Texas Coca-Cola Bottling Company*, 146 NLRB 420, 429, enforced 365 F. 2d 321 (C. A. 5).

The Company contends that its good-faith bargaining is demonstrated by its not taking "a firm hard attitude on every single item" and by its making of "several major concessions to the Union" on seniority, a no-strike clause, and wages. On seniority, the Union proposed plant-wide seniority and subsequently agreed to departmental seniority. The Company never deviated from its initial position that seniority be limited to job classifications within a department and ultimately insisted on its own seniority proposal, rejecting a revised union pro-

¹⁷ In presenting this proposed contract on December 19, 1966, more than 2 months after receiving the Union's contract proposal, the Company ignored agreements reached at the November 28 negotiations on the Union's proposed contract.

posal as "just too complicated." As to wages, the Company initially rejected the Union's wage demands in their entirety on the ground that its wage rates were equal to or better than those in the Jacksonville area. Allegedly based on a new area survey, the Company on January 6, 1967, offered to increase the wages of several skilled job classifications to keep them in line with rates for comparable classifications in the area and, on January 25, it offered to increase shift differentials by 2 cents and to give a general wage increase of 8 cents. The Company thereafter refused to supply the Union with area wage survey data. After the strike, on October 2, 1967, it unilaterally put its proposed wage increases into effect allegedly because it was at a "competitive disadvantage in the local labor market" and was not satisfied with "the caliber of applicants."¹⁸ On August 7, 1967, after the Union called off the strike, the Company agreed to a change in wording of its no-strike clause so that the Union would not be liable for unauthorized strikes. The Company, however, never retreated from its insistence that the Union accept far-reaching limitations on its right to strike together with voluntary arbitration of grievances, and rejected a union proposal to leave both no-strike and arbitration provisions out of the contract.

Under all the circumstances, I find that the Company made no meaningful concessions on any major issue and that its wage offers and other concessions made "here and there" amounted to no more than "surface bargaining" and were part of "a purposeful strategy to make bargaining futile or fail." *N. L. R. B. v. Herman Sausage Co.*, 275 F. 2d 229, 231-232 (C. A. 5). I conclude that the Company violated Section 8 (a) (5) and (1) of the Act by refusing to bargain in good faith with the Union.

¹⁸ About a month before the wage increase, the Company removed a notice from the bulletin board stating that it would be "unlawful" to give wage increases.

I also find that the Company further violated Section 8 (a) (5) of the Act by refusing to comply with the Union's requests for area wage survey data,¹⁹ and by unilaterally increasing wages on October 2, 1967.²⁰

2. The refusal to reinstate strikers

As the strike which began on the night of February 28, 1967, is attributable to the Company's failure to bargain in good faith,²¹ the strikers under settled law were entitled to reinstatement upon application notwithstanding their having been replaced. The Company therefore violated Section 8 (a) (3) and (1) of the Act by its purported replacement and discharge of virtually all strikers on March 16 and 17, 1967,²² and by its refusal to reinstate strikers to their former jobs upon their individual application or upon the Union's application of July 10, 1967, in their behalf.²³

¹⁹ This matter was fully litigated at the hearing and is within the scope of the complaint.

²⁰ I find nothing improper in the Company's refusal to supply the Union with the names, classifications, and wages paid to employees after the strike began. Attorney Bowden explained that the Company was hesitant to supply the names of employees because of the "large number of instances involving violation and intimidation by strikers against employees working" and offered to supply information on the wages paid to any strike replacement believed by the Union to be paid more than was the replaced striker. Cf. *W. L. McKnight, d/b/a Webster Outdoor Advertising Company*, 170 NLRB No. 144.

²¹ *Billups Western Petroleum Company*, 169 NLRB No. 147.

²² *Cincinnati Cordage and Paper Co.*, 141 NLRB 72, 75-76.

²³ The Union's telegram recited that it was "the Union's official notice that all strikers hereby request to return to work." I find without merit the Company's contention that the telegram did not qualify as an unconditional offer to return to work because it also recited that the Union had directed the strikers "to return to work as soon as possible." Unlike *Ozark Dam Constructors*, 99 NLRB 1031, 1038-1041, the telegram requests reinstatement to their old jobs of all strikers and the record warrants no finding that the parties had an understanding that the strikers were to make individual applications for reinstatement. Such individual applications would have been futile as shown

3. Prolongation of the strike

The General Counsel contends that even if the strike started as an economic one, the Company's discharge of the strikers, promises of wage increases to nonstrikers, and illegal refusal to supply the Union with area wage surveys and data concerning employment during the strike, converted the strike into an unfair labor practice strike. Plant Superintendent George Peacock's promises of wage increases to a few nonstrikers on the evening of February 28, 1967, tended to interfere with their statutory right to join the strike and hence were violative of Section 8 (a) (1) of the Act,²⁴ and I have found the refusal to furnish area wage survey information to the Union after the strike began violative of Section 8 (a) (5) of the Act. Although these unfair labor practices bear upon the Company's state of mind during the bargaining negotiations, I see no connection between them and the duration of the strike. The promise to a few nonstrikers of wage increases well below those sought by the Union would hardly tend to prolong the strike, nor do I see any such impact in the circumstances of this case stemming from the Company's failure to comply with the Union's requests for its area wage surveys.

Assuming an economic strike, any striker was entitled to reinstatement to his job without loss of seniority or other rights and privileges, as distinguished from non-

by the Company's discharge of strikers on March 16 and 17, 1967, and its insistence before and after receiving the Union's telegram that returning strikers apply for new employment. *N. L. R. B. v. Valley Die Cast Corporation*, 303 F. 2d 64, 65-67 (C. A. 6).

²⁴ Paragraph 12 of the complaint attributed this conduct to the Company's "officers, agents and representatives, more particularly Vice President Thomas Peacock." As the matter was fully litigated, I do not consider the variance between complaint and proof a bar to an unfair labor practice finding. Accordingly, the Company's motion to dismiss paragraph 12 is denied.

discriminatory consideration for new employment, only if his job was vacant when he first applied for reinstatement. *N. L. R. B. v. Fleetwood Trailer Co.*, 389 U. S. 375; *Union Bus Terminal of Dallas, Inc.*, 98 NLRB 458; see *Bartlett Collins Co.*, 110 NLRB 395, 398. The Company's letters of March 16 and 17, 1967, notifying strikers that they had been permanently replaced and were terminated, followed prior refusals to reinstate strikers seeking to return to work and served notice upon the strikers that they could return to work, regardless of vacancies that might arise, only as new employees. The letters were sent out at a time when the Company was experiencing a considerable turnover in personnel. It appears, however, that the Company was successful in obtaining a steady flow of applicants for employment. In these circumstances, the letters, albeit based on a mistaken view of the law that hiring of a "permanent" replacement terminates an economic striker's employment status,²⁵ only confirmed what the strikers must have already known—that the Company had substantially succeeded in filling their jobs. See and compare *John W. Thomas Co.*, 111 NLRB 226.

I find that the Company did not engage in conduct during the strike which prolonged the strike.²⁶

²⁵ Section 2 (3) of the Act provides that the term "employee" includes "any individual whose work has ceased as a consequence of, or in connection with, any current dispute . . . and who has not obtained any other regular and substantially equivalent employment. . . ." See *Fleetwood Trailer Co.*, *supra*.

²⁶ The record shows that a crane operator job was open when striker Johnnie Snead sought to return to work on March 13, 1967. Snead would be entitled to reinstatement and backpay from that date, even assuming that he was an economic striker. Similar findings are not warranted with respect to strikers J. E. Sarrells, Melvin Ponce, Raymond Miller, and Ralph Hodges, who sought to return to work on March 15, 1967, Carl Hillyard who sought to return later in March, or George Loznicka, who asked for work on May 30. Although work was available for them, the record does not establish that their former jobs had been vacated by their replacements when they sought to return to work.

IV. Conclusions of Law

1. The Company violated Section 8 (a) (5) and (1) of the Act by failing to bargain in good faith with the Union on and after November 28, 1966, as the exclusive bargaining representative of the employees in the following appropriate bargaining unit: All production and maintenance employees, including truckdrivers and warehousemen, employed by the Company at Jacksonville, Florida, but excluding office clerical employees, draftsmen, professional employees, guards and supervisors as defined in the Act.
2. The Company violated Section 8 (a) (5) and (1) of the Act by refusing to furnish the Union with copies of its area wage surveys, and by unilaterally increasing wage rates on October 2, 1967.
3. The strike which began on February 28, 1967, was caused by the Company's failure to bargain in good faith with the Union.
4. The Company violated Section 8 (a) 2 (3) and (1) of the Act by its purported replacement and discharge of unfair labor practice strikers, and by failing or refusing to reinstate the strikers listed in the attached Appendix A upon their individual applications to return to work or upon the Union's request of July 10, 1967.
5. The Company violated Section 8 (a) (1) of the Act by promising wage increases to nonstrikers.
6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2 (6) and (7) of the Act.

V. The Remedy

Having found that the Company engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the Company discriminatorily refused to reinstate the employees listed in the attached Appendix A. I shall therefore recommend that the Company offer them immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, dismissing if necessary all persons employed by Respondent after February 28, 1967. If there is not then sufficient work available for the remaining employees including those offered reinstatement, all available positions shall be distributed among them without discrimination because of their union activity or sympathy, in accordance with such system of seniority or other non-discriminatory practice heretofore applied by the Company in the conduct of its business. All such employees for whom jobs are not available after such distribution shall be placed on a non-discriminatory preferential hiring list. I shall further recommend that Respondent make the strikers whole for any loss of pay suffered because of the discrimination against them. The loss of pay under the order recommended shall be computed in the manner set forth in **F. W. Woolworth Company**, 90 NLRB 289, with interest added thereto in the manner set forth in **Isis Plumbing & Heating Co.**, 138 NLRB 716.

I shall further recommend that Respondent bargain with the Union upon its request.

As the unfair labor practices of Respondent found herein go to the heart of the Act, it will be recommended that Respondent cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.

RECOMMENDER ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, I recommend that the Respondent, Florida Ma-

chine & Foundry Company and Fleco Corporation, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Promising employees wage increases to induce them not to engage in protected strike activity.

(b) Discouraging membership in the Union, or any other labor organization, by discriminatorily discharging or refusing to reinstate employees because they engaged in lawful strike activity, or in any other manner discriminating in regard to hire or tenure of employment or any term or condition of employment.

(c) Refusing to bargain in good faith with the Union.

(d) Refusing to furnish the Union with area wage surveys or with other information relevant to the intelligent performance of its functions as the collective bargaining representative of the employees in the appropriate unit.

(e) Unilaterally effecting wage increases or other changes in the conditions of employment of the employees in the appropriate unit.

(f) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Upon request, bargain collectively and in good faith with the Union as the exclusive representative of its employees in the appropriate unit, and embody in a signed agreement any understanding reached.

(b) Upon request, meet and bargain collectively with the Union with promptness and frequency concerning the negotiation of a contract.

(c) Notify and consult the Union, and afford it an opportunity to bargain collectively, with respect to any changes in wages, or other terms and conditions of employment before effectuating such changes.

(d) Offer to all unfair labor practice strikers whose names are listed in the attached Appendix A, immediate and full reinstatement to their former or substantially equivalent positions, and make each striker whole for any loss of pay he may have suffered because of the discrimination against him, in the manner set forth in the section entitled "The Remedy."

(e) Notify the employees whose names are listed in the attached Appendix A, if presently serving in the Armed Forces of the United States, of the right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

(f) Preserve and make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary or useful in computing the amount of back-pay due, as herein provided.

(g) Post at its Jacksonville, Florida, plant, copies of the attached notice marked "Appendix B."²⁷ Copies of said notice, on forms provided by the Regional Director for Region 12, shall after being duly signed by Respondent, be posted immediately upon re-

²⁷ If these Recommendations are adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER" in the notice. If the Board's Order is enforced by a decree of a United States Court of Appeals, the notice will be further amended by the substitution of the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" for the words "A DECISION AND ORDER."

ceipt thereof, and be maintained for 60 consecutive days, thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director for Region 12, in writing, within 20 days from the date of receipt of this Trial Examiner's Decision, what steps Respondent has taken to comply herewith.²⁸

It is further recommended that the complaint be dismissed insofar as it alleges violations of the Act not specifically found herein.

Dated at Washington, D. C.

/s/ MELVIN POLLACK
MELVIN POLLACK
Trial Examiner

TXD-269-68

APPENDIX A

Name	Name	Name
Snead, Johnnie	Newbill, James	Jackson, McArthur
Hendley, Arthur	Crawford, Sam	Thomas, George
Brown, Alexander	Howard, Lennie	Collins, Willie L.
Dove, John	Perry, John	Wright, Herbert
Kelly, Curtis	Woodard, Joseph	Christie, Frank
Loyd, William	Cross, Lorinza	Livingston, Edward
Cannon, Melvin	Rivers, Henry Lee	Jackson, Edward
Analey, Alfred	Badger, John	Felton, Willie
Cradick, Nathan	Wyche, Joseph	Wrights, Frank
Cummings, Kenneth	Cobb, Avery	Miller, Henry
Jenkins, Earnest	Robinson, Joseph	Hunter, Jesse L.
Thomas, Ronald	Mobley, Alden	Fudge, Jay Lynn

²⁸ If these Recommendations are adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 12, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

Name
Newton, James
Davis, William
Reddick, Ora
Gates, Oscar Lee
Shanks, James
Ware, George
Johnson, Frankland
Mobley, Roy
Vason, James O.
Shirah, Freddie
Wyman, Earl C.
Driggers, Van
Singleton, Joe
Christie, Richard
Gillyard, Sylvester
Harrell, Willis
Benton, George
Clark, Horace
Peoples, Dewery
Mungin, Robert
Smith, Charlie
Withers, James C.
Kohn, Edward
Wilson, Henry Lee
Mosley, Isiah
Daniels, David
Robinson, Charles
Mays, Harrell E.
Ponce, Merlin
Gamble, Willie
Wesley, Glenn
Terrell, Edward
Brown, Ronald
Jones, Freddie Lee
Benge, Roy R.
Toake, Leroy
Ricketson, Willie H.
Thomas, Marion
Fishburne, Elijah
Boggs, Willie
Mack, John E.
Goodman, William H.
Butler, Jimmie
Girtman, Vogie

Name
McCloud, Walter Lee
Lovelace, Albert
Hunter, Theodore
Jones, Roosevelt
Martin, Charles
Perry, Albert
Clark, Earnest
Mines, Malichi
Seniors, Thomas
Dasher, Joseph
Smith, Ben
Cauldin, Edward
Smith, Walter L.
Bellamy, Wilbur
Seymore, Grover
Smith, Dan
Chance, Alex
Bryant, Melvin
Nelon, Pressie
Brown, Walter Lee
Williams, Terry
Walker, Odie
Jackson, Willie
Baxter, Samuel
Evans, Billie
McClary, Isaac B.
King, Clement
Young, James
Reid, Jonathan
Wright, Edward D.
Taylor, Charles E.
McCanless, Franklin
Tomlinson, John, R.
McManus, Charles
Allen, Andrew
Purdy, Albert
Felton, Lophus
Scantling, Frank
Daniels, Benjamin
Reid, Luther B.
Gordon, Thomas
Wright, Willie B.
Harris, Bobby

Name
Purdy, Willie
Loznicka, George
McCallister, Harold
Hildum, Roy
Handley, John W.
Stokes, Ben
Causey, John A.
Smith, Rufus
Johnson, Richard
Robinson, Howard
Harris, Alonzo
Brown, Eddie
Waters, Nazaree
Booth, Adell
Lewis, Thomas
Sheppard, Edward
Moore, Nelson
Hodges, Ralph
Sweat, Tenly
Hillyard, Carl
Britt, Robert A.
Hartley, Owen
Laurendine, Bobby
Perkins, Ellis
Sarrella, J. E.
Shivar, John
Green, Edward
Peterson, Samuel
Sapp, Robert Lee
Badger, George
Fountain, Alpheus
Gunder, Carther
Ramsey, Willie
Mincay, Arthur
Henderson, Jimmy Lee
Allen, Billy
Miller, Raymond
Waye, Eugene
Wells, John A.
Causey, Earl
Tomlinson, Eugene
Kitchens, James
Collins, Robert

APPENDIX B

Notice to All Employees
Pursuant to
the Recommendations of a Trial Examiner of the
National Labor Relations Board
and in order to effectuate the policies of the
National Labor Relations Act
(as Amended)

we hereby notify our employees that:

WE WILL NOT discourage membership in UNITED STEELWORKERS OF AMERICA, AFL-CIO, or any other labor organization of our employees, by refusing to reinstate unfair labor practice strikers upon their unconditional requests, or in any other manner discriminating in regard to hire or tenure of employment or any term or condition of employment.

WE WILL NOT promise our employees wage increases to induce them to refrain from supporting union-sponsored strikes or other union activity.

WE WILL NOT refuse to bargain collectively with the Union by failing to meet for contract negotiations with reasonable promptness and frequency.

WE WILL NOT change wages, hours, or any term or condition of employment of our employees in the bargaining unit, without notifying, consulting, and bargaining with the Union, as the exclusive representative of our employees in the appropriate unit set forth below.

WE WILL NOT refuse to furnish the Union, upon its request, with our area wage surveys, or with any other relevant data necessary and useful for the purposes of collective bargaining.

WE WILL NOT refuse to bargain in good faith with the Union as the representative of our employees in the appropriate unit.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in any other activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

WE WILL, upon request, bargain collectively and in good faith with UNITED STEELWORKERS OF AMERICA, AFL-CIO, as the exclusive representative of our employees in the appropriate unit, and embody in a signed agreement any understanding reached.

WE WILL, upon request, meet and bargain collectively with the Union with promptness and frequency concerning the negotiation of a contract.

WE WILL notify and consult the Union, and afford the Union an opportunity to bargain collectively, with respect to any changes in wages, or other terms and conditions of employment before effectuating such changes.

WE WILL offer to all unfair labor practice strikers whose names are listed in APPENDIX A attached to the Trial Examiner's Decision, immediate and full reinstatement to their former or substantially equivalent positions, and make them whole for any loss of pay they may have suffered as a result of the discrimination against them.

WE WILL notify any of the employees whose names are listed in APPENDIX A to the Trial Examiner's

Decision, if presently serving in the Armed Forces of the United States, of the right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

The bargaining unit is:

All production and maintenance employees including truckdrivers and warehousemen employed at the Jacksonville plant, but excluding office clerical employees, draftsmen, professional employees, guards, and supervisors as defined in the Act.

Florida Machine & Foundry Company
and Fleco Corporation
(Employer)

Dated By
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Federal Office Building, Room 706, 500 Zack Street, Tampa, Florida 33602 (Tel. No. 228-7711).

DECISION AND ORDER

(Issued March 13, 1969)

On April 29, 1968, Trial Examiner Melvin Pollack issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the

National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Trial Examiner further found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended that they be dismissed. Thereafter the Respondent, the Charging Party, and the General Counsel filed exceptions to the Trial Examiner's Decision, and the Respondent and the Charging Party filed supporting briefs.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings,¹ conclusions,² and recom-

¹ These findings and conclusions are based, in part, upon the credibility determinations of the Trial Examiner, to which the Respondent excepts, on the basis of our careful review of the records, we conclude that the Trial Examiner's credibility findings are not contrary to the clear preponderance of all the relevant evidence. Accordingly, we find no basis for disturbing those findings. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enf'd. 185 F. 2d 362 (C. A. 3).

² We do not adopt the Trial Examiner's conclusion contained in the first paragraph of Section 4 in his "Analysis and Conclusions" that as a practical matter the Company was insisting that the Union virtually surrender its rights to strike without the usual "quid pro quo of the compulsory arbitration of grievances."

As we are in agreement with the Trial Examiner's conclusion that the strike was an unfair labor practice strike at all times, we find it unnecessary herein to consider the rights of economic strikers. However, we do not adopt his conclusions on the rights of economic strikers, to the extent they do not conform to the Board's views as expressed in *The Laidlaw Corporation*, 171 NLRB No. 175.

mendations of the Trial Examiner with the additions and modifications noted below.

1. We agree with the Trial Examiner that the Company violated Section 8 (a) (5) and (1) by failing to bargain in good faith with the Union.

The Trial Examiner further found, and we agree that the Company independently violated Section 8 (a) (5) of the Act by refusing to comply with the Union's request for area wage survey data, and by unilaterally increasing wages on October 2, 1967. With respect to the wage survey, however, the record indicates that the Company, through counsel, ultimately sent a letter to the Union dated August 15, 1967, which included the wage "survey" as to four job positions. The record further shows however, that the Union initially requested such information by letter, dated May 31, 1967, and renewed its request on July 27 and August 8. While letter from the Company to its counsel which gave the survey information was dated June 12, 1967, it was not transmitted to the Union until August 15. Since the information was readily available on or about June 12, we find that the 2 months delay in transmitting such information was unreasonable and therefore violative of Section 8 (a) (5) of the Act.

2. The Trial Examiner, in footnote 20 of his Decision, found nothing improper in the Company's refusal to supply the Union with the names, classifications, and wages paid to employees after the strike began. The Trial Examiner stated that counsel for the Company explained that the Company was hesitant to supply the names of employees assertedly because of the "large number of instances involving violation and intimidation by strikers against employees working" and offered to supply information on the wages paid to any strike replacement believed by the Union to be paid more than was the replaced striker. However, mere assertions of the Company's posi-

tion does not constitute affirmative proof of harassment. Absent more positive evidence of employee harassment, the Company was not relieved of its obligation to furnish such information and its refusal to do so is an additional violation of Section 8 (a) (5).³

3. The Trial Examiner failed to include the name of employee Percy Jackson on Appendix A of his Decision. The Amended Consolidated Complaint names Jackson as an employee requesting reinstatement on or about April 15, 1967, and the Respondent's answer admits this fact. Jackson was one of the employees to whom the Respondent sent a termination letter on March 16, 1967. An exhibit shows that a list of strikers that requested reinstatement to the job includes the name of Jackson and a date of application of July 10, 1967, which is the date of the Union's telegraph application for reinstatement of strikers. A list purporting to show dates on which strikers were replaced does not indicate that Jackson was replaced. In view of these facts we shall add the name Percy Jackson to Appendix A, as a striker entitled to reinstatement and backpay.

In the Remedy section of his Decision, the Trial Examiner recommended that the Respondent make the strikers whole for any loss of pay suffered because of the discrimination against them, but he did not determine a date on which the backpay period should begin. In view of the

³ Member Zagoria agrees that the Respondent violated Section 8 (a) (5) in refusing to furnish the names of employees in the unit, and their wages. However, in so finding, Member Zagoria notes that such information was presumptively relevant to the Union's function as collective-bargaining agent. The Union's latest request for the information occurred on August 7, well after the strike was over and many of the strikers had returned to work. The Employer's written refusal did not occur until August 15. Member Zagoria does not find it necessary, in the circumstances of this case, to decide whether the Respondent had a similar duty to supply this information during the pendency of the strike.

various dates on which the strikers made application for reinstatement, we shall order the backpay period for each striker to begin 5 days after the date of such striker's application and to run until the date of reinstatement, with actual dates to be determined in compliance proceedings.⁴

ORDER

Pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Recommended Order of the Trial Examiner, as modified below, and orders that the Respondent, Florida Machine & Foundry Company and Fleco Corporation, Jacksonville, Florida, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as herein modified:

1. Insert in paragraph 1 (d), line 1, following the words "... wage surveys ..." the phrase "within a reasonable time,"
2. Delete from paragraph 2 (d) of the Recommended Order, the words "in the section entitled 'The Remedy'," and substitute therefor the word, "herein."
3. Appendix A is modified by adding the name of Percy Jackson.

⁴ For the reasons set forth in his partial dissent in *Sea-Way Distributing, Inc.*, 143 NLRB 460 at 461-462, Member Brown would order backpay for the discharged strikers from the date each received the Respondent's letters of March 16 and 17, or the date on which each applied for reinstatement, whichever is earlier. As to those strikers who had not applied prior to receipt of the termination notices, in Member Brown's view it cannot now be determined whether they continued on strike despite their discharge or whether their failure to make formal application resulted from the Respondent's refusal to reinstate, except as new employees, those who did apply prior thereto. Hence all are entitled to full backpay.

4. Insert in the fifth indented paragraph of Appendix B following the words "... wage surveys ..." the phrase, "within a reasonable time ..."

Dated, Washington, D. C., Mar. 13, 1969.

GERALD A. BROWN Member

HOWARD JENKINS, JR. **Member**

SAM ZAGORIA Member

NATIONAL LABOR RELATIONS BOARD

(Seal)

**United States Court of Appeals for the
District of Columbia Circuit**

National Labor Relations Board
Petitioner

V.

**Florida Machine & Foundry Com-
pany and Fleco Corporation
Respondent**

APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

**To the Honorable, the Judges of the United States Court
of Appeals for the District of Columbia Circuit:**

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Sec. 151, *et seq.*, as amended by 73 Stat. 519), hereinafter called the Act, respectfully applies to this Court for the enforcement of its Order against Respondent, Florida Machine & Foundry Company and Fleco Cor-

poration, Jacksonville, Florida, its officers, agents, successors, and assigns. The proceeding resulting in said Order is known upon the records of the Board as Case Nos. 12-CA-3831 and 12-CA-3915 (1-3).

1. Upon due proceedings had before the Board in said matter, the Board on March 13, 1969, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent herein, its officers, agents, successors, and assigns.

2. On March 26, 1969, pursuant to Section 10 (f) of the Act, United Steelworkers of America, AFL-CIO, charging party in the proceeding before the Board filed with the Court a petition to review the Board's Order. Said petition appears on the docket of the Court as No. 22,872, United Steelworkers of America, AFL-CIO v. National Labor Relations Board.

3. In accordance with said petition to review and pursuant to Section 10 (e) and (f) of the Act, as amended, and pursuant to Rule 17 (b) of the Federal Rules of Appellate Procedure, the Board is filing with this Court a certified list of all documents, transcript of testimony, exhibits and other material comprising the entire record of the proceeding before the Board upon which the said Order was entered, which includes the pleadings, testimony, and evidence, the Board's findings of fact and conclusions of law, and the Order of the Board sought to be enforced.

4. The Court has jurisdiction of the application for enforcement by virtue of its jurisdiction over the entire proceedings upon the filing of said certified list in connection with the petition to review in No. 22,872.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this application to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein

and make and enter upon the pleadings, testimony and evidence, and the proceeding set forth the transcript and upon the Order thereupon a judgment enforcing in whole the Board's said Order and requiring Respondent, its officers, agents, successors, and assigns, to comply therewith.

/s/ MARCEL MALLET-PREVOST

MARCEL MALLET-PREVOST

Assistant General Counsel

National Labor Relations Board

Dated at Washington, D. C. this 5 day of May, 1969.

United States Court of Appeals
For the District of Columbia Circuit

United Steelworkers of America,
AFL-CIO Petitioner

v.

No. 22,872

National Labor Relations Board
Respondent

National Labor Relations Board
Petitioner

v.

No. 23,010

Florida Machine & Foundry Com-
pany and Fleco Corporation
Respondent

RESPONDENTS-EMPLOYER'S ANSWER

I. Respondents, Florida Machine & Foundry Co., and Fleco Corporation, respectfully admits:

(a) That on March 13, 1969 the National Labor Relations Board issued an order, directed to the Respondents,

wherein they stated findings of fact and conclusions of law as reported in 174 NLRB No. 170 (1967).

(b) That the Respondents manufactures machinery parts at its plant in Jacksonville, Florida, and is engaged in commerce within the meaning of Section 2 (6) and (7) of the National Labor Relations Act. The Respondents' interstate sale during the twelve month period preceding the issuance of the complaint by the Regional Director exceeded \$50,000.

(c) That the United Steelworkers of America, AFL-CIO, is a labor organization within the meaning of Section 2 (5) of the National Labor Relations Act.

II. The Respondents deny that they have violated Sections 8 (a) (1), (3) and (5) of the National Labor Relations Act as stated by the Board in its decision and order.

III. The Respondents affirmatively state that the substantial evidence of the record as a whole does not support the finding that the Company had violated the National Labor Relations Act.

Respectfully submitted this 1st day of August, 1969.

HAMILTON & BOWDEN

By CHARLES F. HENLEY, JR.

Attorneys for Respondents-Employer

Address of Counsel:

1056 Hendricks Avenue
Jacksonville, Florida 32207

Certificate of Service

I hereby certify that a copy of the foregoing has this 1st day of August, 1969 been served upon the following by first-class U. S. mail:

George H. Cohen, Esquire
Bredhoff, Gottesman and Cohen
1011 Connecticut Avenue
Washington, D. C. 20036

George Longshore, Esquire
Cooper, Mitch and Crawford
1025 Bank for Savings Building
Birmingham, Alabama

Marcel Mallet-Prevost, Esquire
National Labor Relations Board
Washington, D. C. 20570

Charles F. Henley, Jr.
Attorney

GENERAL COUNSEL'S EXHIBIT 2

Western Union Telegram

442P EDT JUL 9 67 AA 163

A JNA 135 PD JACKSONVILLE FLO 9 415P EDT
O R T BOWDEN, ATTORNEY (DLR EARLY AM)
1056 HENDRICKS AVE JACKSONVILLE FLO

SIR THE UNITED STEEL WORKERS OF AMERICA
HAS DIRECTED ALL STRIKING MEMBERS AT
FLORIDA MACHINE AND FOUNDRY AND FLECO
TO RETURN TO WORK AS SOON AS POSSIBLE BE-
GINNING AT 8AM MONDAY JULY 10TH 1967. SOME
ARE PRESENTLY OUT OF TOWN BUT WILL RE-
PORT IN THE NEAR FUTURE. THIS TELEGRAM IS
THE UNION'S OFFICIAL NOTICE THAT ALL STRIK-
ERS HEREBY REQUEST TO RETURN TO WORK.
THEIR RETURN TO WORK IS NOT CONDITIONED
UPON ANY DEMAND BY THE UNION, SAVE THAT
SUCH EMPLOYEES BE PUT TO WORK ON THE

SAME JOB EACH PREVIOUSLY HELD OR ON A
SIMILAR JOB OF EQUIVALENT PAY

JAMES L NASH REPRESENTATIVE UNITED
STEELWORKERS OF AMERICA

(41).

GENERAL COUNSEL'S EXHIBIT 3

**Striker Employees Who Did Not Return to Work Upon
Commencement of the Strike of Feb. 28, 1967**

Name	Name
Snead, Johnnie	Cross, Lorinza
Hendley, Arthur	Rivers, Henry Lee
Brown, Alexander	Badger, John
Dove, John	Wyche, Joseph
Kelly, Curtis	Cobb, Avery
Loyd, William	
Cannon, Melvin	Robinson, Joseph
Ansley, Alfred	Mobley, Alden
Craddick, Nathan	McCloud, Walter Lee
Cummings, Kenneth	Lovelace, Albert
Jenkins, Earnest	Hunter, Theodore
Thomas, Ronald	Jones, Roosevelt
Newton, James	Martin, Charles
Davis, William	Perry, Albert
Reddick, Ora	Clark, Earnest
Gates, Oscar Lee	Mines, Malichi
Shanks, James	Seniors, Thomas
Ware, George	Dasher, Joseph
Johnson, Frankland	
Mobley, Roy	Smith, Ben
Vason, James O.	Cauldin, Edward
Shirah, Freddie	Smith, Walter L.
Wyman, Earl C.	Bellamy, Wilber
Driggers, Van	Seymore, Grover
Singleton, Joe	Smith, Dan

Name

Christie, Richard
Gillyard, Sylvester
Harrell, Willis
Newbill, James
Crawford, Sam
Howard, Lennie
Perry, John
Woodard, Joseph
Wrights, Frank
Miller, Henry
Hunter, Jesse L.
Fudge, Jay Lynn
Purdy, Willie
Loznicka, George
McCallister, Harold
Hildum, Roy
Handley, John W.
Stokes, Ben
Causey, John A.
Smith, Rufus
Johnson, Richard
Robinson, Howard
Harris, Alonzo
Brown, Eddie
Waters, Nazaree
Booth, Adell
Lewis, Thomas
Sheppard, Edward
Benton, George
Clark, Horace
Peoples, Dewery
Mungin, Robert
Smith, Charlie
Withers, James C.
Kohn, Edward
Wilson, Henry Lee

Name

Jackson, McArthur
Thomas, George
Collins, Willie L.
Wright, Herbert
Christie, Frank
Livingston, Edward
Jackson, Edward
Felton, Willie
Gamble, Willie,
Wesley, Glenn
Terrell, Edward
Brown, Ronald
Jones, Freddie Lee
Benge, Roy R.
Toske, Leroy
Ricketson, Willie H.
Thomas, Marion
Fishburne, Elijah
Boggs, Willie
Mack, John E.
Goodman, William H.
Butler, Jimmie
Girtman, Vogie
Chance, Alex
Bryant, Melvin
Nelson, Pressie
Brown, Walter Lee
Williams, Terry

Walker, Odis
Jackson, Willie
Baxter, Samuel
Evans, Billie
McClary, Isaac B.
King, Clement
Young, James,

Name	Name
Mosley, Isiah	Reid, Jonathan
Daniels, David	Wright, Edward D.
Robinson, Charles	Taylor, Charles E.
Mays, Harrell E.	McCanless, Franklin
Ponce, Merlin	Tomlinson, John R.
McMannus, Charles	Sarrells, J. E.
Allen, Andrew	Shivar, John
Purdy, Albert	Green, Edward
	Peterson, Samuel
Felton, Lephus	Sapp, Robert Lee
Scantling, Frank	Badger, George
Daniels, Benjamin	Fountain, Alpheus
Reid, Luther B.	Gunder, Carther
Gordan, Thomas	Ramsey, Willie
Wright, Willie B.	Mincey, Arthur
Harris, Bobby	Henderson, Jimmy Lee
Moore, Nelson	Allen, Billy
Hodges, Ralph	Miller, Raymond
Sweat, Tenly	Waye, Eugene
Hillyard, Carl	Wells, John A.
Britt, Robert A.	Causey, Earl
Hartley, Owen	Tomlinson, Eugene
Laurendine, Bobby	Kitchens, James
Perkins, Ellis	Collins, Robert

GENERAL COUNSEL'S EXHIBIT 4

Strikers Who Requested Reinstatement and Dates of Application

Strikers That Requested Reinstatement of Job

Name of Employee	Date Applied
Allen, Billy R.	7-12
Badger, George	8- 3
Baxter, Samuel J.	7-24

Name of Employee	Date Applied
Bellamy, Wilber	7-25
Benge, Roy R.	7-11
Benton, George	7-10
Boggs, Willie	7-10
Booth, Adell D.	7-10
Britt, Robert A.	7-11
Brown, Alexander Sr.	7-13
Brown, Eddie	7-10
Brown, Ronald	7-10
Brown, Walter L.	7-11
Cannon, Melvin Jr.	9- 1
Causey, Camilon E.	7-25
Chance, Alex	7-10
Christie, Richard	7-25
Clark, Horace M.	7-12
Cobb, Avery	7-13
Collins, Willie	7-25
Cross, Lorenza	7-13
Cummings, Kenneth A.	7-10
Daniels, Benjamin	8-18
Davis, William F.	7-10
Dove, John H.	7-10
Driggers, Van	7-10
Felton, Lephus	7-13
Felton, Willie	7-11
Fountain, Alpheus	7-31
Fudge, Jay Lynn	7-10
Gamble, Willie	7-10
Gates, Oscar Lee	7-10
Gauldin, Edward N.	7-24
Gillyard, Sylvester	7-10
Girtman, Vogie	7-13
Green, Edward	7-10
Gunder, Carthur	7-17
Handley, John W.	8-14

Name of Employee	Date Applied
Harrell, Willis	7-10
Harris, Alonzo	7-11
Henderson, Jimmy Lee	7-13
Hendley, Arthur Jr.	7-10
Hilliard, Carl L.	7-26
Hodges, Ralph H.	3-15
Howard, Lennie N.	7-10
Hunter, Jessie L.	7-10
Jackson, McArthur	7-11
Jackson, Percy	7-10
Johnson, Richard S.	8-7
Jones, Freddie Lee	7-10
Kelly, Curtis	7-11
King, Clement	7-26
Kitchens, James A.	7-13
Lewis, Thomas	7-10
Loyd, William J.	7-25
Loznicka, George F. Jr.	5-30
Mack, John E.	7-10
Martin, Charles	7-12
Miller, Raymond W.	3-15
Mincey, Arthur W.	7-10
Mines, Malichi Jr.	7-10
Mobley, Roy	7-10
Mosley, Isiah	8-31
Mungin, Robert	7-10
McCanless, F. G.	7-14
McCloud, Walter Lee	7-11
Nelson, Pressie J.	7-10
Newton, James Jr.	7-10
Perry, John	7-11
Ponce, Marlin A.	3-15
Purdy, A. Y.	3-15
Purdy, Willie	7-10
Reid, Luther B. Jr.	7-10

Name of Employee	Date Applied
Rivers, Henry Lee	7-10
Robinson, Charles	7-10
Robinson, Howard D. Jr.	7-10
Sapp, Robert Lee	7-11
Seniors, Thomas	7-10
Seymore, Grover	7-11
Shanks, James A.	7-10
Sheppard, Edward	7-10
Shivar, John R. Jr.	8-17
Singleton, Joe L.	7-11
Smith, Charlie	7-10
Smith, Dan	8- 2
Smith, Walter Lee	7-10
Sorrells, J. E.	3-15
Stokes, Ben	7-25
Sweat, Tenly	7-10
Terrell, Edward	7-10
Thomas, George	7-10
Thomas, Marion	7-10
Thomas, Ronald E.	7-10
Vason, James O.	7-10
Wells, John A.	7-14
Wesley, Glenn	7-10
Williams, Terry	8-29
Withers, James C.	7-25
Wilson, Henry Lee	7-17
Woodard, Joseph	7-10
Wright, Herbert	7-10
Wyche, Joseph	7-31
Wyman, Earl C.	9-11
Waters, Nazaree	7-10
Young, James	8-31

GENERAL COUNSEL'S EXHIBIT 5

Florida Machine & Foundry Company/Fleco Corporation Employees Sent Termination Letters March 16, 1967

Allen, Andrew	Harrell, Willis	Ramsey, Willie
Allen, Billy	Harris, Alonzo	Reddick, Ora
Badger, George	Harris, Bobby	Reid, Jonathan
Badger, John	Hartley, Owen	Reid, Luther B.
Baxter, Samuel	Henderson, Jimmy Lee	Ricketson, Willie H.
Bellamy, Wilbur	Hendley, Arthur Jr.	Rivers, Henry Lee
Benge, Roy R.	Hildum, Roy	Robinson, Charles
Benton, George	Hillyard, Carl	Robinson, Howard
Boggs, Willie	Hodges, Ralph	Robinson, Joseph
Booth, Adell	Howard, Lennie	Sapp, Robert Lee
Britt, Robert A.	Hunter, Jessie L.	Sarrells, J. E.
Brown, Alexander	Jackson, Edward	Scantling, Frank
Brown, Eddie	Jackson, McArthur	Seniors, Thomas
Brown, Ronald	Jackson, Percy	Seymore, Grover
Brown, Walter	Jackson, Willie	Shanks, James
Bryant, Melvin	Jenkins, Earnest	Sheppard, Edward
Butler, Jimmy	Johnson, Frankland	Shirah, Freddie
Cannon, Melvin	Johnson, Richard	Shivar, John
Causey, Earl	Jones, Freddie Lee	Singleton, Joe
Causey, John	Jones, Roosevelt	Smith, Ben
Chance, Alex	Kelly, Curtis	Smith, Charlie
Christie, Frank	King, Clement	Smith, Dan
Christie, Richard	Kitchens, James	Smith, Rufus
Clark, Earnest	Kohn, Edward	Smith, Walter L.
Clark, Horace	Lewis, Thomas	Snead, Johnnie
Cobb, Avery	Livingston, Edward	Stokes, Ben
Collins, Robert	Lovelace, Albert	Sweat, Tenly
Collins, Willie L.	Loyd, William	Taylor, Charles E.
Crawford, Sam	Mack, John E.	Terrell, Edward
Cross, Lorinza	Martin, Charles	Thomas, George
Cummings, Kenneth	Mays, Harrell E.	Thomas, Marion
Daniels, Benjamin	Miller, Henry	Thomas, Ronald
Daniels, David	Miller, Raymond	Tomlinson, Eugene
Dasher, Joseph	Mincy, Arthur	Tomlinson, John R.
Davis, William	Mines, Malichi	Toske, Leroy
Dove, John	Mobley, Alden	Vason, James
Driggers, Van	Mobley, Roy	Walker, Odia
Evans, Billie	Mosley, Isiah	Ware, George
Felton, Lephus	Mungin, Robert	Waters, Nazaree
Felton, Willie	McCanless, Franklin	Waye, Eugene
Fishburne, Elijah	McClary, Issac B.	Wells, John A.
Fountain, Alpheus	McCloud, Walter Lee	Wesley, Glenn
Fudge, Jay Lynn	McManus, Charles	Williams, Terry
Gamble, Willie	Nelson, Pressie	Willson, Henry Lee
Gates, Oscar Lee	Newbill, James	Withers, James C.
Gauldin, Edward	Newton, James	Woodard, Joseph
Gillyard, Sylvester	Peoples, Dewey	Wright, Edward D.
Girtman, Vogie	Perkins, Ellis	Wright, Herbert
Goodman, William H.	Perry, John	Wright, Willie B.
Gordon, Thomas	Peterson, Samuel	Wrights, Frank
Graddick, Nathan	Ponce, Merlin	Wyche, Joseph
Green, Edward	Purdy, Albert	Wyman, Earl C.
Gunder, Carter	Purdy, Willie	Young, James
Handley, John W.		

GENERAL COUNSEL'S EXHIBIT 6

To you, our Employee,

August 3, 1966

We have been very much aware of the fact that Hospital and Doctor costs in the Jacksonville area have been increasing steadily over the past few years. Also, hospital facilities that have been available previously to some of our men are no longer available and this has further tended to increase medical and hospital costs.

In an effort to help our employees meet these changed conditions we have been working with the insurance company over the past few months in an attempt to develop a better hospital, surgical and medical program. All the necessary details have now been worked out and the new program was scheduled to be announced today and to become effective August 1st. This revised plan will increase your daily room rate from \$9.00 a day to \$15.00 a day. In addition, it will expand other areas of hospital, surgical and medical (including maternity benefits) coverage and increase everybody's life insurance to \$5,000.00.

Unfortunately, yesterday we received a notification from the United Steel Workers advising us that a majority of our employees were members of their union. While we do not believe that this union does represent a majority of our men, the law prohibits us from making this change now, under these conditions.

Therefore, we regret that we must place this new medical program on the shelf until the problem with this Pittsburgh based union has been resolved.

Sincerely,

/s/ W. H. Pearsall

W. H. Pearsall

Vice President—Finance

Fleco Corporation

Florida Machine & Foundry Co.

GENERAL COUNSEL'S EXHIBIT 7

(Letterhead of Hamilton & Bowden, Jacksonville,
Florida 32207)

August 15, 1967

Mr. W. T. Edwards
United Steelworkers of America
P. O. Box 18144
Tampa, Florida 33609

Re: Florida Machine and Foundry Co.

Dear Mr. Edwards:

Reference is made to your letter of August 8, 1967, requesting certain information from the Company. I note that you admit you were incorrect in reference to the time when you made your wage offer of 18¢ per hour. I note further that our records indicated the correct time this offer had been made.

In regard to your request for information as to the names of employees whom the Company considers guilty of misconduct during the strike so as to prevent them from returning to work, the Company takes the position that this is not a fair subject for negotiations since, in effect, there is litigation (Case No. 12-CA-3915) in process concerning the employees in question. This request by the union seeks information which would require a disclosure of evidence which will constitute the Company's defenses to a complaint, if one is issued by the General Counsel. Neither the Act nor the Board's regulations provide for prehearing disclosures, and in the cited case if the General Counsel proceeds on the union's charge, the upholding of the union's request for information would require the disclosure of evidence concerning the Company's defenses which the General Counsel himself would have been legally unable to procure except as adduced at a hearing on a complaint. In that situation the union obviously has no better standing than the General Counsel to require disclosure of respondent's evidence.

I note that you request the names and rates of pay for each employee presently at work along with the job to which they are assigned. You state that this request is made because of substantial reports that striker replacements are being paid more in some instances than were the strikers who were replaced. I refer to you my letter of July 31, 1967, in which I stated "We have carefully considered the letter which we received from Mr. Nash on May 31, 1967, and have been unable to find any instance in which any current employee is receiving any rate in excess of the rate for the job the strikers received before they participated in the strike." In view of the fact that we had a large number of instances involving violence and intimidation by strikers against employees working, we are hesitant to furnish the names of employees to you for this reason. We renew our previous advice, that if you have substantial reports that people are being paid more, if you will kindly indicate the individual involved, or the job, we will give you an answer on any specific incident.

In reference to the nature and results of the survey of the Company in arriving at its wage offer for the skilled employees, I enclose herewith a copy of a letter which I received from Mr. Thomas M. Madison, Executive Vice President of the Company, in this regard.

Trusting that this fully answers your questions in this respect, I remain

Very truly yours,

/s/ O. R. T. Bowden

O. R. T. Bowden

ORTB:lm

cc: Mr. T. M. Madison

Mr. T. W. Peacock

Mr. W. H. Pearsal

Mr. E. W. Dean

GENERAL COUNSEL'S EXHIBIT 7-A

(Letterhead of Florida Machine & Foundry Co.
Jacksonville, Florida 32203)

June 12, 1967

Mr. O. R. T. Bowden
Hamilton & Bowden
1056 Hendricks Avenue
Jacksonville, Florida

Dear Otto:

In regard to the information you requested from me in order to answer Mr. Nash's letter of May 31st, I submit the following:

A. Premium Pay for Replacement Employees:

I have been informed by our Payroll Department that the result of a detailed review of our present employees shows that they are being paid at the same wage scale that was in effect prior to February 28, 1967. We would be happy to have a third party review this with us; however, in view of the violence associated with the Steelworkers' strike of our operation we do not think they should be provided with a list of our employees.

B. Area Wage Survey Supporting our Offer to Increase the Four Following Job Classifications Beyond the Proposed 8 Cents:

1. Electric Furnace Operators (\$3.00 per hour)
—as we are the only shop in the area with this classification, we would have to draw employees from the area covered by Exhibits A & B.

2. Pattern Makers (\$3.00 per hour)—the same reasoning as No. 1 above.

3. Machinists (\$3.00 per hour)—we understand that Parker & Mick, Maddox, Coolsir and Jacksonville Shipyards are paying approximately this figure.

4. Maintenance Men (\$2.85 per hour)—due to the additional tools and knowledge required we felt that these men should be one-half way between the proposed journeyman molder, welder, etc. rate of \$2.70 per hour and the proposed journeyman machinist rate of \$3.00 per hour or \$2.85 per hour.

Otto, if you require additional information in connection with this matter please let us hear from you.

Sincerely,

Florida Machine & Foundry Co.

Thomas M. Madison

Executive Vice President

TMM/jak

Encl.

GENERAL COUNSEL'S EXHIBIT 8

Agreement

This Agreement is entered into this between Florida Machine & Foundry Company and Fleco Corporation or its successors (hereinafter called the Company) and the United Steelworkers of America, (hereinafter referred to as the Union).

Article I

Recognition

1.1 The Company recognizes the Union as the sole and exclusive bargaining agent for all its employees in the bargaining unit as set forth herein below.

All production and maintenance employees, including truck drivers and warehousemen, employed by Florida Machine & Foundry Company and Fleco Corporation at Jacksonville, Florida, but excluding office clerical employees, draftsmen, professional employees, guards and supervisors as defined in the Act.

1.2 The term "employee" as used in this Agreement shall mean all employees of the Company in the bargaining unit at its plant at Jacksonville, Florida.

Article II

Intent and Purpose

2.1 This Agreement is to provide the framework for orderly collective bargaining relations, to secure prompt and equitable disposition of grievances, to establish wages, hours and other working conditions and to maintain harmonious relationships between the Company and the Union.

Article III

Management Prerogatives

3.1 The Management of the plant and the direction of the working forces is vested in the Company. The Company, in exercising its rights, will observe the provisions of this Agreement.

3.2 New employees shall be employed on a trial basis for a period of thirty (30) calendar days. During this period their retention as employees is entirely at the discretion of the Company, but if they remain on the payroll thereafter, they shall be considered regular employees and their seniority shall date from the date of their original hire.

3.3 The Union acknowledges its responsibilities and agrees to support all improvements in methods of opera-

tion, machinery, materials, direction and scheduling of employees for obtaining the lowest possible production costs, consistent with fair labor standards.

Article IV

Check-Off

4.1 The International Secretary-Treasurer of the Union will notify the Company as to the authorized deductions for initiation fees, assessments and monthly dues. The Local Management will check-off from the first pay of each month the Union dues for the current month and initiation fees for every member who has agreed to it in writing. The Local Management will promptly remit these Union dues, assessments and initiation fees to the International Secretary-Treasurer of the Union, 1500 Commonwealth Building, Pittsburgh, Pennsylvania 15222.

4.2 The Union will turn over to the Local Management all check-off forms collected from employees in time for the Payroll Department to arrange for the first check-off. The Union and the Local Management will agree on the time.

4.3 Once an employee signs a check-off form, he cannot revoke it for one year from the date he signed it or until the end of this Agreement, whichever is earlier. If he then wants to revoke it, he must comply with the procedures for revocation set forth in the check-off from which he signed.

4.4 The Union will see that the Company loses nothing on account of any claims, suits or other kinds of liabilities it might have to face because it relied on check-off forms or any written information given to it by the Local Union in connection with this Article.

4.5 The Company shall supply each newly hired employee a copy of the Agreement at the time of the employment.

4.6 Each employee who on the effective date of this Agreement is a member of the Union in good standing and each employee who becomes a member after that date, shall, as a condition of employment, maintain his membership in the Union.

4.7 For the purpose of this Section, an employee shall not be deemed to have lost his membership in the Union in good standing until the International Secretary-Treasurer of the Union shall have determined that the membership of such employee in the Union is not in good standing and shall have given the Company a notice in writing of that fact.

Article V

Hours of Work and Overtime

5.1 The normal work week shall be the five (5) work days Monday through Friday of any calendar week beginning Monday and concluding the following Saturday.

5.2 The regular work day shall be the twenty-four (24) hour period beginning at of any calendar day and ending at the following calendar day.

5.3 Overtime rate of time and one-half will be paid for:

(a) all time worked in excess of eight (8) hours in any one day.

(b) all time worked in excess of forty (40) hours in any one week for which overtime has not already been earned. The payroll week shall be the calendar week beginning at Monday and ending at the fol-

lowing Monday. Time worked in excess of 12 hours in any one day will be paid for at the rate of double time for all hours so worked.

5.4 Overtime work shall be distributed as equally as possible among employees in the plant on a rotation basis, beginning with the most senior employee.

5.5 This Article shall not be construed to be a guarantee of hours of work per day or per week. Determination of daily and weekly work schedules shall be made by Local Management.

5.6 Work performed on Shift No. 2 shall be paid for at the rate of \$0.12 more per hour than the employee would receive on the first shift, and work performed on Shift No. 3 shall be paid for at the rate of \$0.15 more per hour than the employees would receive on the first shift. The swing shift employees will be paid \$0.10 in addition to their regular hourly rate for all hours of work.

Article VI

Premium Days

6.1 All work performed on Saturday, as such, shall be paid for at the rate of one and one-half times the established straight time hourly rate.

6.2 All work performed on Sunday, as such, shall be paid for at double the established straight time hourly rate.

6.3 The Company recognizes the following holidays: New Year's Eve, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day following Thanksgiving, Christmas Eve and Christmas Day. If any of these holidays fall on Saturday or Sunday, the following Monday will be considered the holiday. The pay provisions for the above-named holidays shall be set forth as follows:

(a) For the above-named holidays, when not worked, employees shall receive eight (8) hours pay at his straight time hourly rate, provided that the employee works any part of the work week in which the holiday falls.

(b) Work performed on the above-named holidays shall be paid for at two and one-half times the regular straight time hourly rate. It is understood and agreed that the employees shall not be required to work on such holidays unless an emergency situation prevails.

(c) In the event one or more of the nine (9) holidays for which an employee would get pay though he did not work, may fall during the employee's vacation, he will be paid for the holiday not worked just as he would have been paid if the holiday had not fallen during his vacation. This is in addition to his vacation pay.

Article VII

Reporting and Call-in Pay

7.1 An employee reporting for work on his regular shift without having been notified either by telegram, mail or personally the day previous that there will be no work, shall receive four (4) hours pay at his regular hourly rate or guaranteed rate. However, in the event an employee begins work he shall be paid no less than eight (8) hours pay at his regular rate of pay.

Article VIII

Vacations

8.1 The following vacation with pay shall be granted, based upon the employee's length of continuous service for the Company. To determine the eligibility date, each employee will be eligible for vacations on his anniversary

date, falling in between January 1 and December 31 of each year, and shall be taken at the time most desired by the employee, provided that the employee is on the payroll or on leave of absence or layoff status at the start of the vacation.

- (a) One (1) year, one (1) week vacation with pay.
- (b) Two (2) years, two (2) weeks vacation with pay.
- (c) Four (4) years, three (3) weeks vacation with pay.
- (d) Ten (10) years, four (4) weeks vacation with pay.

8.2 For the purpose of this Article the term "continuous employment" shall mean employment not interrupted (except for injury or illness) for more than twenty-six (26) consecutive pay periods in any one instance.

8.3 Each eligible employee shall receive vacation pay immediately prior to the taking of his vacation.

8.4 Both the Company and the Union recognize the benefits to be gained through the taking of vacations and eligible employees must take the vacation time off to which they are entitled.

8.5 Vacations and/or vacation pay shall not accumulate from year to year. Each employee's entitlement shall terminate at the end of the twelve (12) month period immediately following the date such entitlement was established.

8.6 Employees who resign or are discharged for proper cause prior to taking vacation or receiving vacation plan, shall be paid the accrued vacation allowance due them when leaving the employ of the Company.

8.7 If the employees work at the plant during the vacation period, then such employees will receive their

regular vacation pay plus the amount they actually earn during such vacation at their regular rate of pay. Employees shall not be required to work during their vacation period but may do so at their option if requested to do so by the Company.

Article IX

Transfers and Job Vacancies

9.1 Employees being assigned from one job to another shall be paid their rate or the rate of the job, whichever is higher.

9.2 Employees transferred from one department to another or from one job to another shall be paid as follows:

(a) When an employee is temporarily transferred to a lower rated job for the convenience of Local Management, he shall receive his regular established rate of pay.

(b) When an employee is temporarily transferred to a higher rated job, he shall receive the higher rate of pay at the time of assuming the higher rated job.

(c) Any employee transferred for the convenience of said employee shall receive the established rate of pay at the job to which he has been transferred at the time of such transfer.

Article X

Wage Rates

10.1 Effective as of the 3rd day of October, 1966, the minimum hiring rate for laborers will be \$2.00 per hour. All other minimum rates will be as follows in accordance with classification.

Set-up Man:

Minimum hiring rate:	\$2.83	per hr.
After two months:	2.93	" "
" three months:	3.03	" "
" four months:	3.13	" "
" five months:	3.23	" "
" six months:	3.30	" "

**Maintenance Men, Molders,
Machinists, Core Makers,
Pattern Makers, Burners,
and Electrical Welders—**

Minimum hiring rate:	\$2.75	per hr.
After three months:	2.95	" "
" six months:	3.15	" "

**Arc-Air Operator:
Heat Treating:**

Minimum hiring rate:	2.75	" "
After three months:	2.95	" "
" six months:	3.15	" "

Apprentice:

Minimum hiring rate:	2.23	" "
After 2 months:	2.35	" "
" three months:	2.45	" "
" four months:	2.55	" "
" five months:	2.65	" "
" six months:	2.70	" "

Shake-out Man:

Minimum hiring rate:	2.15	" "
After three months:	2.25	" "
" six months:	2.40	" "

**Truck Drivers, Riggers,
Helpers, Grinders, Cleaners
and Chippers:**

Minimum hiring rate:	2.20	" "
After three months:	2.35	" "
" six months:	2.50	" "

Spray Painter and
Parts Man:

Minimum hiring rate:	2.20	"	"
After three months:	2.30	"	"
" six months:	2.40	"	"

Crane Operator:

Minimum hiring rate:	2.25	"	"
After three months:	2.40	"	"
" six months:	2.55	"	"

Payloader and Ryster
Operator:

Minimum hiring rate:	2.35	"	"
After three months:	2.50	"	"
" six months:	2.60	"	"

Carpenters:

Minimum hiring rate:	2.30	"	"
After three months:	2.40	"	"
" six months:	2.55	"	"

Leadmen, in their classification, will be paid at least 25¢ per hour, above the highest classification in which they lead.

Sand Mill Operator:

Minimum hiring rate:	\$2.25 per hr.		
After three months:	2.35	"	"
" six months:	2.50	"	"

Roto Blast:

Minimum hiring rate:	2.30	"	"
After three months:	2.40	"	"
" six months:	2.55	"	"

Article XI

Seniority

11.1 Seniority for promotion shall be based upon the total length of uninterrupted employment of any employee

in the plant. Seniority for lay-offs and recalls shall be based upon the total length of uninterrupted employment of any employee in the plant.

11.2 In applying seniority as above defined for the respective purposes, the Company shall have the right to consider the respective capabilities of the employees involved, which shall be subject to grievance procedure if any employee is aggrieved.

11.3 Seniority shall be applied on a plant-wide basis.

11.4 The Company shall furnish the Union with and shall post on the Bulletin Board, within fifteen (15) days following execution of this Agreement a seniority list on a plant-wide basis. The published seniority list shall be revised semiannually.

11.5 Authorized Grievance Committeemen and the following Local Union Officers: President, Vice President, Recording Secretary, Financial Secretary, and Treasurer, shall be considered as having top seniority in the application of the principle of seniority as prescribed in any of the provisions of this Agreement.

11.6 Employees transferred to jobs outside the bargaining unit will retain but not accumulate seniority during such period of transfer and in the event of return to the bargaining unit, their seniority shall be applied in accordance with the provisions of this Article.

11.7 Laid-off employees shall be responsible to keep on file with Local Management the address to which the notice to return to work is to be sent and the Management will notify such laid-off employees not less than three (3) days prior to the date called back to work by certified mail or telegram.

11.8 Any recalled employee shall be considered to have quit if he fails to accept employment within three (3)

days after notification, or fails without reasonable excuse to report for work as instructed.

11.9 In the event of a vacancy or new job opening occurring, such vacancy or job opening shall be posted on the Union bulletin boards with wage rates for a period of three (3) regular work days to provide employees an opportunity to apply for such openings. After a three (3) day period, the posting shall be removed and the Union shall be notified of the names of all employees who bid for the job. The senior employee shall be given the proper instructions on such job and a reasonable period of time to become familiar with and to demonstrate his ability to perform such job. This period shall not exceed five (5) working days. Such demonstration shall not be interpreted as a period of training, but as an opportunity to become acquainted with the details of the job and to display his fitness to perform the job in a satisfactory manner.

11.10 Employment interrupted for the following reasons shall result in the loss of seniority:

- (a) Voluntary termination of employment.
- (b) Discharge for proper cause.
- (c) Continuous lay-off for the life of the Agreement.

Article XII

Grievance Procedure

12.1 The Company will recognize a Grievance Committee elected by the Union members from among its employees, of not more than thirteen (13) members, one of whom shall be Chairman.

12.2 The Union agrees it will advise the Company in writing of the names of the Union President and Grievance

Committeemen, and upon changes will advise the Company of such changes.

12.3 A grievance shall be defined as any difference between the Company and the Union as to the meaning and application of any of the provisions of this Agreement.

12.4 The Grievance Chairman shall be afforded time off with pay for the actual time lost on their shift for purpose of handling an emergency grievance. All other grievances shall be handled by the Grievance Committee and the Company representative at a time and place agreed upon by the Company and the Grievance Committee Chairman. Members of the Grievance Committee shall be afforded time off with pay for the purpose of attending the regular meetings with the Company concerning grievances.

12.5 There shall be no suspension of work on account of any grievance, and an earnest effort on the part of both the Company and the Union shall be made to settle any grievance promptly and in the following manner:

Step 1: Any employee having a grievance shall, after receiving permission from his foreman, take said grievance up with the Grievance Committee Chairman. Any grievance of any employee not reported by the Grievance Chairman to the foreman of such employee within five (5) days after the same occurs, shall no longer constitute a grievance. The foreman and the Grievance Committee Chairman will try to settle the grievance promptly, and the foreman will give answer within twenty-four (24) hours from time grievance was reported to the foreman.

Step 2: If the grievance is not settled, the Grievance Committee Chairman shall submit the grievance in writing to Local Management and shall arrange a meeting between a National Representative of the United Steelworkers of America, himself, and Management within

forty-eight (48) hours after Step 1 above. If the grievance is not submitted in writing to Local Management within the forty-eight (48) hours (excluding Saturday and Sunday), no grievance shall be deemed to exist. The Union and Management will meet promptly and endeavor to settle said grievance. The settlement of grievances, made at this step, shall be set forth in writing and shall be signed by authorized representatives of management and the Union.

12.6 If the above procedure has failed to settle the grievance, the controversy may, at the request of either party, be submitted to arbitration. The procedure for arbitration and the selection of the arbitrator shall be as follows:

(a) Within ten (10) days from date of last meeting, the party requesting to arbitrate the controversy shall give written notice thereof to the other party, setting forth specifically said grievance.

(b) Within five (5) days from receipt of such notices, the parties shall meet to select and agree upon an arbitrator. In the event that the parties fail to agree on an arbitrator, the arbitrator will be chosen from a list of five (5) persons, experienced in the field of the subject to be arbitrated, supplied by the American Arbitration Association.

(c) As promptly as possible after the arbitrator has been selected, he shall conduct a Hearing between the parties and consider the controversy submitted for his decision. Presentation of the controversy may at the discretion of the parties take the form of written briefs, oral testimony, pertinent records, etc., and the arbitrator shall render in writing a report and decision to the Company and the Union within fifteen days after completion of the presentation of the controversy.

(d) The Arbitrator shall have the jurisdiction and authority to interpret and apply the provisions of this Agreement with respect only to the controversy being arbitrated, but shall not have the authority to add to, take away from, alter or amend any of the provisions contained therein.

(e) The decision of the Arbitrator shall be served upon the Company and the Union in writing, and shall be final and binding upon both parties.

(f) Both the Company and the Union shall share equally the expenses of the arbitration proceedings.

Article XIII

Discharge

13.1 In the event an employee has been discharged or suspended, and he feels he has been unjustly dealt with, such discharge may be submitted as a grievance, subject to the provisions of Article XII of this Agreement.

13.2 In the event it is established through the Grievance Procedure of Article XII of this Agreement, said employee has been discharged or suspended unjustly, the Company shall reinstate said employee without prejudice and make him whole for all wages lost.

Article XIV

No Strikes or Lockouts

14.1 The Union agrees that it will not call, authorize or sanction any strike, slowdown, walkout, or any other suspension of work by the employees during the life of this Agreement, and the Company agrees that there will be no lockout.

Article XV

Bulletin Boards

15.1 The Company will provide a bulletin board near the time clock in the plant for the posting of notices by the Union of Union meetings, social activities, appointments and elections.

Article XVI

Leave of Absence

16.1 The provisions of this Article are for the purpose of maintaining uninterrupted seniority during authorized periods of absence without pay.

16.2 An employee who has attained seniority may be allowed up to thirty (30) calendar days leave of absence without pay for personal reasons providing said employee requests such leave in writing from the Company and it is agreed to by the Company and the Union. If the reason for the requested leave is death or serious illness in the immediate family, such requested leave will be granted as a matter of right.

16.3 One (1) additional period of thirty (30) days leave of absence may be granted an employee provided that the Company and Union agree to such additional period, and provided further said employee requests the extension before the currently granted period of thirty (30) days is up.

16.4 Should an employee take employment elsewhere during his leave of absence without first securing joint approval of Management and the Union, he shall be considered as having voluntarily terminated his employment.

16.5 Employees not to exceed two (2) from the Plant at any one period designated by the Union to attend to official Union business, shall be granted not more than three (3) weeks leave of absence at any one period upon written notice to the Company by the Union.

16.6 Should any employee fail to report to work on the work day next following the termination of his leave of absence, such employee shall be considered to have terminated his employment unless he has a valid excuse for not so reporting.

Article XVII

Safety and Health

17.1 The Company shall make reasonable provisions for the safety and health of its employees during the hours of their employment. Protective devices, special equipment and adequate facilities for sanitation, necessary to protect the employees and safeguard them from injury shall be provided.

17.2 A joint safety committee shall be appointed or elected of equal number from the Union and Management, one member shall act as the chairman. They shall have the right to check on hazardous conditions throughout the plant and make recommendations for corrections of such hazardous conditions and shall make recommendations for preventative measures to safeguard the employee from injury while working in premises.

Article XVIII

Jury Duty Pay

18.1 All employees shall be paid wages amounting to the difference between the amount paid them for jury

service and the amount they would have earned at their basic hourly rate had they worked on such days at their regular jobs. The maximum jury duty pay for any work week shall be limited to forty (40) hours at the employee's straight time rate.

Article XIX

Pensions

19.1 The Company shall provide pensions for all of the employees in the bargaining unit who have required twenty (20) years or more of seniority and the Plan will provide \$5.00 per year of service for such employees.

19.2 A disability pension plan must be worked out between the Company and the Union.

Article XX

Miscellaneous

20.1 The Company agrees that it will not work supervisory employees who are classed as supervisory personnel on work ordinarily performed by production workers which results in the lay-off of production workers. This will not preclude instructions of new or old employees by such supervisors on new or job changes.

20.2 An employee injured in an industrial accident will get his straight time hourly rate for the straight time hours in getting medical care the day he was injured. If the attending doctor or nurse thinks he should not go back to work, he shall be paid for the rest of the day.

20.3 A relief period of fifteen (15) minutes away from work will be permitted during each half shift. Also a fifteen (15) minute wash-up time will be granted before quitting time.

Article XXI

Insurance and Hospitalization

21.1 All employees and their dependents shall be provided hospitalization and surgical benefits, the premiums for such benefits shall be paid entirely by the Company. The Union recommends Blue Cross and Blue Shield.

21.2 The Company will provide life insurance for all employees in the bargaining unit, the amount of life insurance shall be based on the employees' yearly earnings, but in no event less than \$5,000 per employee, and to be paid for by the Company.

Article XXII

Severance Allowance

22.1 If, during the term of this Agreement, the Company shall decide to close completely and permanently, the plant to close completely and permanently, the plant covered by this Agreement, employees whose jobs discontinued or who are not transferred to another plant of the Company will be paid severance allowance on the basis of the following schedule:

Years of Accredited Service	Weeks of Severance Allowance
Less than 1 year	0
1	2
2	2
3	2
4	2
5	2½
6	3
7	4
8	5
9	6
10	7
11	8
12	9
13	10
14	11
15	12
16	13
17	14
18	16
19	18
20	20

Article XXIII

General Benefits

23.1 Except as modified by this agreement, general benefits which have been established by the Company, shall be continued unless changed by mutual consent.

Article XXIV

Duration

This Agreement shall be effective from
and shall continue in full force until

Thereafter this Agreement shall continue in full force and effect from year to year unless the Union shall notify the Company and/or the Company shall notify the Union by contacting the District Office of the United Steelworkers of America, located at 4302 Henderson Blvd., Tampa, Florida, in writing not less than sixty (60) days prior to the expiration of the term or any extended term of the Agreement of an intention to modify or terminate the Agreement.

In Witness Whereof, the Company and the Union have caused this Agreement to be executed by their Officers thereunto duly authorized and their seals to be affixed as of this

United Steelworkers of America,
AFL-CIO

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FLORIDA MACHINE & FOUNDRY COMPANY
and FLECO CORPORATION

By

Attest

GENERAL COUNSEL'S EXHIBIT 9

Agreement

This Agreement, made and entered into this ... day of, 1966, by and between Florida Machine & Foundry Company and Fleco Corporation (hereinafter called the Company) and United Steelworkers of America (hereinafter called the Union).

Article I

Recognition of the Union

The Company hereby recognizes the Union as the exclusive collective bargaining agent for its employees in the bargaining unit described as follows, to-wit:

All production and maintenance employees, including truck drivers and warehousemen, employed by Florida Machine & Foundry Company and Fleco Corporation at Jacksonville, Florida; excluding office clerical employees, draftsmen, professional employees, guards and supervisors as defined in the Act.

Article II

Management Rights

A. The management of the Company's plants and the direction of its working forces, including the right to establish new jobs, abolish or change existing jobs, increase or decrease the number of jobs, temporarily or permanently, change materials, processes, products, equipment, to subcontract any of the manufacturing, warehousing and delivery, to discontinue, temporarily or permanently, in whole or in part, its business of manufacturing and delivery, to increase or decrease the number of

working hours per day or per week, shall be vested exclusively in the Company and not subject to arbitration. The Company shall be the sole judge of applicants for employment, their qualifications and physical fitness. Subject to the provisions of this Agreement, the Company shall have the right to schedule and assign work to employees to be performed, recall employees who are laid off, demote, suspend, discipline or discharge for any cause not in violation of this Agreement.

B. In addition to items mentioned in Paragraph "A", the Company reserves and retains in full and completely any and all management rights, prerogatives and privileges, except to the extent that such rights, prerogatives and privileges are specifically limited by this Agreement. Such management rights as the Company reserves in Paragraphs "A" and "B", and those rights which are not limited by this Agreement, shall not be subject to arbitration if this be provided for by this Agreement.

Article III

Company Rules

The Company shall have the right to establish, maintain and enforce, rescind, amend or change, reasonable rules and regulations, it being understood and agreed that such rules and regulations shall not be in conflict with the provisions of this Agreement. Current rules are attached hereto, marked Addendum "B" and made a part of this Agreement and accepted as reasonable by the Union. If a rule is changed or a new rule is established by the Company, the reasonableness of such changed or new rule must be made the subject of a grievance under the grievance procedure within two (2) weeks from the date of posting same or the Union will be conclusively presumed to agree that it is reasonable

within the meaning of this Agreement and it cannot thereafter be questioned. The Company shall post on its bulletin board and shall keep posted for at least two (2) weeks a written or printed copy of all such changed or new rules and regulations. Employees violating such rules may be disciplined by layoff without pay or discharged.

Article IV

Union Membership is Voluntary

A. It is understood and agreed that each employee or prospective employee has the right to decide for himself whether or not he wishes to become a member of the Union and to make such decision freely and voluntarily, without any pressure, coercion or threats from any person.

Union Activity

B. The Union agrees that there will be no solicitation of membership or collection of dues from its members which in any manner will interfere with the work and duties of employees, or in production or proper operation of the Plants.

Union Visitation

C. An authorized representative of the Union shall be permitted to visit the office of the Company at all reasonable hours, and after notifying a representative of the Company designated by it for such purpose will be permitted to visit the Company's plant during working hours to investigate any matter covered by this Agreement; but he shall in no way interfere with the progress of the work. Such permission shall not be unreasonably withheld by the Company.

Article V

Hours of Work

The standard work week will be forty (40) hours. The work week and pay period end on Sunday. All time worked to forty (40) hours per week will be paid at straight time. All time worked over forty (40) hours per week will be paid for at one and one-half ($1\frac{1}{2}$) times the straight hourly rate.

Article VI

Seniority

A. Seniority shall mean length of service from last employment date and shall be established on a Plant departmental classification basis. In the event the Company employs a group of applicants at the same time, seniority shall be by alphabetical sequence of last name. If last names are identical, seniority shall be by first name.

B. New employees shall be considered temporary and on probation until such employees have worked the assigned and scheduled work time for such employees for ninety (90) working days and the Company accepts no responsibility if such probationary employee is laid off or released during such ninety (90) day period. At the end of the probationary period, employees shall be placed on the seniority list as of their hiring date and hour on which he actually reported to work, also showing classification and rate of pay.

C. In the matter of layoffs, rehiring, transfers and filling of job vacancies in the working force, provided however that ability as recognized by the Company shall be the factor in the selection of employees to be retained,

rehired or transferred relative ability being equal in the opinion of the Company, seniority shall prevail. Layoffs of not more than seven (7) working days and transfers of not more than five (5) working days shall be considered temporary and may be made at the Company's discretion without regard to seniority.

D. The Company will maintain up-to-date seniority lists which will be available to the Union.

E. Seniority shall be broken for the following reasons:

- (1) Voluntary quit
- (2) Discharge for cause
- (3) Absence from work for three (3) consecutive days without permission or acceptable explanation.
- (4) Failure to report for work within three (3) days after being called back from layoff
- (5) Layoff or illness for a period of three (3) months or more.

F. Employees who leave the bargaining unit to perform supervisory duties shall continue to accumulate seniority, and if demoted or returned to the bargaining unit they shall have their accumulated seniority provided that such employees shall have had at least one (1) or more years of seniority on the date of leaving the bargaining unit.

Article VII

Grievances

A grievance is defined as a dispute between the Company and its employees over the application, interpretation or alleged violation of a specific provision of this Agreement.

Should an employee have any grievance, an earnest effort shall be made to adjust such grievance immediately in the following manner:

A. **Step No. 1:** Within three (3) days after the occurrence of the thing or event on account of which the employee shall feel aggrieved, such aggrieved employee, accompanied by his steward and the department foreman shall attempt to adjust such grievance.

B. **Step No. 2:** If such grievance is not adjusted under Step No. 1 above within two (2) days after the decision of the department foreman, the employee shall, within said two-day period, if he elects to further pursue the grievance, reduce such grievance to writing, giving all material facts and witnesses, which shall be signed by the aggrieved employee and dated. Such written statement shall immediately be referred to the Business Agent of the Union and Department Manager, who will attempt to adjust the grievance.

C. **Step No. 3:** If such written grievance is not adjusted under Step No. 2 above within five (5) days from its submission to the Department Manager, the aggrieved employee and the Union may refer the matter to a Management designee, who will attempt to adjust such written grievance within ten (10) days from the date of its receipt.

D. Employees are not to leave their jobs for the purpose of investigating, presenting, handling or settling grievances. All such activities are to be done on off time of all employees concerned without pay from the Company. The Company will cooperate in this respect and will make available its representatives at mutually convenient times.

E. Company prerogatives and reserved rights of management shall not be subject to grievance procedure.

F. If time limitations set out in this Article are not observed or waived in writing by both Company and Union, the grievance in which such non-observance occurred shall be considered null and void and at an end.

Article VIII

Arbitration

Any grievance which remains unsettled after having been fully processed through the grievance procedure pursuant to Article VII may be submitted to arbitration upon the written request of either the Company or the Union, provided such request is made within twenty (20) days after final decision of the Company and provided further the other party agrees to arbitrate the said grievance.

If the parties cannot agree to arbitrate the dispute, then either party may resort to its economic power under the following terms and conditions:

Ten (10) days after the answer is received denying a request for arbitration, either party may give written notice by registered mail declaring the No-Strike No-Lockout Clause inapplicable to the dispute between the parties as to the subject matter of the grievance only. Such written notice regarding said No-Strike No-Lockout Article shall be effective for a period of thirty (30) days after such notice declaring No-Strike No-Lockout Article inapplicable, as aforesaid, is received by the other party. The giving and receipt of said notice in reference to the No-Strike No-Lockout Article, or the institution of a strike or lockout pursuant thereto, will not in any way change, alter or affect any condition, agreement or requirement of this contract, except as specifically set forth in this Article, and the contract shall remain in full force and effect for its stated term in all other respects.

If the Union does not call a strike, and the Company does not institute a lockout during the thirty (30) day period following receipt of notice as stated above, then, in that event, the No-Strike No-Lockout Article automatically becomes effective again on the 31st day following receipt of said 30-day notice until again declared inapplicable under this Agreement, or until expiration of this Agreement, whichever occurs first.

If the Union calls a strike or the Company institutes a lockout during the said 30-day period, the No-Strike No-Lockout Article shall continue inapplicable to said strike or lockout so long as said strike or lockout is effective and current. At the conclusion of the strike or lockout, upon agreement of the parties upon the disputed grievance, the No-Strike No-Lockout Article shall automatically become effective again.

Rights of management not specifically limited by this Agreement are hereby reserved by the Company and shall not be subject to arbitration.

Article IX

Insurance

The Company agrees to maintain the current insurance program now in effect upon the same terms and conditions.

Article X

Absenteeism and Tardiness

A. An employee must not be absent or late for work without securing permission from the Department Foreman not later than the day before an expected absence or tardiness. The reason for absence or tardiness shall be stated to the Department Foreman who shall grant

permission only in cases of illness or other emergency or necessity. Illness shall be evidenced by a doctor's certificate.

B. In emergencies that arise after the employee has left work, he must telephone or otherwise notify the Department Foreman and give the cause and probable length of absence or tardiness.

C. Any employee violating any of the above provisions may be disciplined by layoff or for continued or repeated violation, may be discharged.

Article XI

No Strike Clause

A. The Union will not cause or engage in, or permit its members to cause or engage in, nor will any member of the Union take part in any strike, sit-down, stay-in, slow-down, picketing or sympathy strike in or upon premises or equipment of the Company, or against the company upon other premises or equipment, or any curtailment, restriction or interference with work of the Company or its agents, servants or employees, nor advise such action to its members or any other person.

B. Any employee participating in any action contrary to this Article may be disciplined by the Company by layoff or discharge in the discretion of the Company.

C. The Company agrees that it will not cause a lockout of employees during the life of this Agreement. It is understood and agreed that a lockout means a voluntary, complete cessation of operations of the Company to prevent employees from working.

D. For violation of this Article, the parties consent to the entry of a state court consent temporary restraining order without necessary legal notice against the offending

party. Before this Section is invoked, the offending party shall be notified immediately of the violation.

E. The parties agree that in the event of a breach of the Union's no-strike promise contained in this Article, such breach shall not be referable to the grievance procedure herein, but shall be the subject of a suit or action in federal or state court at the Company's discretion.

F. If a strike occurs in violation of this Article, the Company shall not be required to discuss the dispute in question, or any other matter or grievance, while such strike is in effect.

Article XII

Contract Constitutes Entire Agreement of Parties

The parties acknowledge and agree that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter included by law within the area of collective bargaining and that all the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Employer and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right to request or require further collective bargaining, and each agrees that the other shall not be obligated to bargain collectively with respect to any matter or subject not specifically referred to or covered by this Agreement, whether or not such matters have been discussed, even though such subjects or matters may not have been within the knowledge or contemplation of either or both parties at the time that they negotiated or signed this Agreement. This Agreement contains the entire contract, understanding, undertaking and agreement of the parties

hereto and finally determines and settles all matters of collective bargaining for and during its term, except as may be otherwise specifically provided herein.

Article XIII

Vacations

A. Employees who have been continuously in the employ and service of the Company for one (1) year shall receive one (1) week's vacation with pay. Vacation pay will be for forty (40) hours at the employee's straight-time hourly rate.

B. Employees who have been continuously in the employ and service of the Company for five (5) years shall receive two (2) weeks' vacation with pay. Vacation pay will be eighty (80) hours at the employee's straight-time hourly rate.

C. Employees who have been continuously in the employ and service of the Company for ten (10) years shall receive three (3) weeks' vacation with pay. Vacation pay will be 120 hours at the employee's straight-time hourly rate.

D. To qualify for a paid vacation, the employee must have worked at least 1800 straight-time hours during the preceding anniversary year.

E. Vacations will be taken at such times during the year as selected by the Company.

F. The provisions of this Article shall not apply in the case of an employee whose employment is terminated by resignation or discharge prior to qualifying for his vacation.

Article XIV

Holidays

The following days are considered as paid holidays:

1. New Year's Day
2. Memorial Day
3. Fourth of July
4. Labor Day
5. Thanksgiving Day
6. Christmas Day

All employees shall receive eight (8) hours pay if no work is performed on the above-named holidays. If work is performed on the above-named holidays, the employee shall receive stright-time for actual hours worked, plus holiday pay. To qualify for holiday pay, the employee must work the Plant scheduled work day before and after the said holiday. Holiday pay for time not worked shall not be counted for overtime pay.

Article XV

Break Periods

Employees shall receive a paid ten (10) minute break period during each one-half segment of their work day.

Article XVI

Bulletin Board

The Company agrees that notices and announcements having to do with official Union business may be posted upon the Plant bulletin boards after the Plant Manager's approval. This section is not to be construed to permit

posting of any political, advertising or controversial matter on bulletin boards or elsewhere on the Company's property.

Article XVII

Miscellaneous

A. Safety—The Company will make reasonable provisions for the safety and health of the employees at the Plant during the hours of their employment.

B. Military Clause—The parties hereto agree that the Company will comply with the Selective Service and Training Act and amendments thereto.

Article XVIII

Physical Examinations

Any medical examination requested by the Company shall be promptly complied with by all employees, provided however, the Company pays for all such required medical examinations. If the employee does not comply with a request by the Company for a medical examination, such employee shall be suspended until he complies.

Article XIX

Job Classifications and Wage Rates

To Be Negotiated.

Article XX

Work by Supervisors

Foremen and supervisors may continue to perform such work as they have customarily performed in the past. Other than this work, foremen or supervisors will not

perform any work usually done by employees in the bargaining unit except to demonstrate the manner in which the work is to be done, or in the event of a breakdown or for the temporary relief of an employee in cases of emergency or Act of God or when assisting a group of employees.

Article XXI

Leaves of Absence

A. The provisions of this Article are for the purpose of maintaining uninterrupted seniority during authorized periods of absence without pay.

B. Employees will be allowed up to thirty (30) calendar days leave of absence without pay for personal reasons, provided said employee requests such leave in writing from the Company and conditions permit. If the reason be of emergency nature—death or serious illness in the immediate family (wife, children, brother, sister, mother, father, mother-in-law, father-in-law), such requested leave will be granted regardless. Such emergency leave shall be up to but not exceeding ten (10) days.

C. Additional periods of up to thirty (30) days may be granted an employee provided there is good reason and the Company agrees to such additional periods or period, and provided further said employee requests the extension before the currently granted period of thirty (30) days is up.

D. Should an employee take employment elsewhere during his leave, he shall be considered as having voluntarily terminated his employment with the Company.

E. Employees, not to exceed two (2) at any one time, nor one (1) from any department, designated by the Union to attend to official Union meetings or conventions, shall

be granted a leave not to exceed seven (7) days at any one (1) period, upon written notice to the Company by the Union.

Article XXII

Reporting Pay

An employee who reports to work at his regularly scheduled time who has not been notified not to report shall be given at least two (2) hours work or be given at least two (2) hours pay in lieu thereof, except when no work is available because of mechanical failures or similar cause beyond the control of the Company, or an Act of God.

Article XXIII

The Company agrees to provide washing facilities, including lockers, soap and towels. Present facilities are considered adequate.

Article XXIV

Protective devices and equipment shall be available to employees upon present terms and conditions. Present equipment is considered adequate.

Article XXV

Duration

A. This Agreement shall be effective on the date of the signing hereof and shall continue in full force and effect to and including Thereafter, this Agreement shall continue in full force and effect from year to year unless either party hereto shall notify the other in writing not less than sixty (60) days prior to the expiration of the term or any extended term of the

Agreement of an intention to modify or terminate this Agreement. After receipt of said notice, negotiations shall commence not later than thirty (30) days before the expiration of this Agreement or any renewal thereof, and if such modifications are not completed prior to the expiration of the term of this Agreement, it shall remain in effect for an additional period of thirty (30) days, after which it may be terminated by either party by giving fifteen (15) days' written notice to the other party.

B. It is understood and agreed that in the event of any notices referred to in Paragraph A of the intention to modify this Agreement, that any disagreement or dispute arising therefrom shall not be subject to arbitration except by mutual written agreement of all parties.

In Witness Whereof, the parties hereto, by their duly authorized representatives, have affixed their signature the day and year first-above written.

Florida Machine & Foundry Company and
Fleco Corporation

By

United Steelworkers of America

By

Addendum "B"

Company Rules

We wish to call to your attention certain Company rules. These are listed below. Enforcement of these rules will be as follows:

Major Company Rules

Any employee who commits any of the following prohibited acts may be laid off without pay or immediately

discharged in the discretion of the Company, depending upon the facts in the individual case:

1. Spoiling work willfully, sabotage, defacing, damaging or destroying Company property or the property of other employees.

2. Removal of safety devices or guards on machines or equipment without permission.

3. Stealing property of an employee or the Company.

4. Bringing in or drinking intoxicating liquor on plant premises or reporting for work under the influence of alcohol.

5. Conviction of a crime, the nature of which would be calculated to render the employee undesirable as an associate or coworker.

6. Punching another employee's time card or falsification of a time card or any other Company record.

7. Refusal to obey a direct instruction, insubordination, or unsatisfactory customer contact.

8. Sleeping on duty.

9. Smoking in posted prohibited areas.

10. Wage assignment.

11. Provoking or being the aggressor in a fight on Company property.

12. Leaving the Plant during working hours without proper authorization by Foreman or Plant Superintendent.

Minor Company Rules

Minor offenses are those of a less serious nature which subject the employee to a reprimand or penalty. For the first violation of any of these rules, the employee shall receive a warning notice; for the second violation of any

of these rules, the employee may be suspended from work without pay for up to and including two (2) weeks; and for the third violation of any of these rules in 15 month period, the employee shall be discharged:

1. Inefficiency, incompetency, neglect of work and/or defective workmanship.
2. Injuring other people, equipment, tools, materials or supplies through carelessness or negligence.
3. Stopping work before quitting time, washing or preparing to leave before proper time.
4. Fighting, running, playing practical jokes, throwing things, pushing people, or other horseplay.
5. The use of profane, abusing or threatening language.
6. Violations of safety or sanitation rules and regulations.
7. Gambling or raffling on Company property.
8. Leaving job, department, without being properly relieved by the foreman.
9. Possession of dangerous or illegal weapons on Company property.
10. Absence or tardiness from work without an excuse acceptable to the Company.
11. Employees shall enter the Plant Premises only during their regular working hours. Admittance at other times is permissible only after obtaining the permission of the Foreman.
12. Operating equipment, riding on trucks, dollies, car loaders, lift trucks, trains or other mobile equipment unless assigned to such duty by supervisors.
13. Solicitation for membership, pledges, subscriptions or the unauthorized collection of money or circulation

of petitions or conducting any outside business on the Company's time without permission of the Plant Manager.

14. Failure to be at work stations ready and prepared to start work at the beginning of shift.
15. Accepting other employment which in any way interferes with employment by the Company.
16. Sale or distribution of articles on the Company property without the specific permission of the Management.
17. Making loans to fellow employees for profit.
18. Felony off the premises. Any employee charged with a felony shall be suspended without pay during the investigation and pending trial of said charge and shall be discharged if convicted.
19. Failure to report any injury immediately to the foreman in charge.
20. Failure to properly punch time card.

GENERAL COUNSEL'S EXHIBIT 10

Submitted Jan. 25, 1967

Seniority

Section 1. For the purpose of this Agreement, the "plant service" of an employee at each plant shall be defined as his service from his most recent date of hire into the plant bargaining unit covered by this Agreement until termination.

Section 2. Departmental seniority of an employee is computed by years, months, and days from the time the

employee is permanently assigned or transferred to his department, except as is provided in Sections 2 and 3 of Permanent Transfers.

Section 3. Departmental seniority and plant service shall be used and applied only for the purposes specified in this Agreement.

Section 4. Departmental seniority shall accumulate during absence only under the following conditions:

- (a) during layoff from the employee's department;
- (b) during leaves of absence granted in accordance with the provisions of Military Service;
- (c) during approved vacations;
- (d) during authorized leaves of absence granted in accordance with the provisions of Leave of Absence;
- (e) during time served on jury duty.

Section 5. An employee shall be considered terminated and shall lose his seniority and plant service, together with all rights inherent thereto under this Agreement if he:

- (a) quits;
- (b) is discharged for cause including being absent for five (5) consecutive working days without notifying the Company;
- (c) is laid off in excess of one (1) year in any one layoff;
- (d) overstays a leave of absence except where the employee can prove his failure to report on time was justifiable;
- (e) fails to comply with the requirements of the recall provisions of Recall to Employment;
- (f) engages in other employment while on leave of absence without the mutual consent of the Company and the Union.

of petitions or conducting any outside business on the Company's time without permission of the Plant Manager.

14. Failure to be at work stations ready and prepared to start work at the beginning of shift.
15. Accepting other employment which in any way interferes with employment by the Company.
16. Sale or distribution of articles on the Company property without the specific permission of the Management.
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- (c) is laid off in excess of one (1) year in any one layoff;
- (d) overstates a leave of absence except where the employee can prove his failure to report on time was justifiable;
- (e) fails to comply with the requirements of the recall provisions of Recall to Employment;
- (f) engages in other employment while on leave of absence without the mutual consent of the Company and the Union.

Section 6. Departmental seniority rosters of all employees showing names, proper dating and plant service shall be posted in places accessible to the employees affected and a reasonable number of copies shall be made available to the Union. The rosters shall be revised in January, April, July and October of each year.

Section 7. When two (2) or more employees have equal departmental seniority, the question of their relative departmental seniority shall be determined according to their plant service. In the event the Company employs a group of applicants at the same time, seniority shall be by alphabetical sequence of last name. If last names are identical, seniority shall be by first name.

Section 8. Any employee may exercise his departmental seniority to fill a vacancy on a shift within his classification which he prefers within his department. He shall not be permitted to exercise this preference on rotating shifts more often than once every six (6) months.

Lines of Progression

The lines of progression already mutually established or which may later become necessary to mutually establish shall be considered a part of this Agreement. The lines of progression shall be subject to mutual review and necessary changes at any time during the life of this Agreement by plant management and the local Union at each plant.

Promotions—Filling of Permanent Vacancies

Section 1. Promotions and filling of permanent vacancies shall be made on the basis of departmental seniority provided the employee has the ability and physical fitness to perform the required work.

Section 2. (a) When filling a new job classification or a permanent vacancy in any line of progression, con-

sideration shall first be given to the employees within all of the job classifications (considered together) above the existing vacancy or new job classification in the same line of progression, in the order of greatest departmental seniority, provided the employee has the ability and physical fitness to perform the required work; second, consideration shall be given to the employees within the other job classifications, if any, which are in the same step as and which are connected with the existing vacancy or new job classification in that line of progression; third, consideration shall be given to the employees within the job classification below the existing vacancy or new job classification, and successively thereafter in each descending step in that line of progression. Such consideration in the said same step and in each step below the permanent vacancy or new job classification shall be given in the order of greatest departmental seniority within each respective job classification, provided the employee has the ability and physical fitness to perform the required work. If such a vacancy or new job classification cannot be filled from employees within the same line of progression or from those who have been laid off from that line of progression, consideration shall next be given to those employees who are in the laborer classification which is in or is attached to that department. The consideration to be given in the laborer classification shall be in the order of greatest departmental seniority where the laborer classification is in the same department; but where the laborer classification is in a Labor Pool attached to that department, the consideration shall be in the order of greatest plant service, except that any employees in such Pool who have any departmental seniority in the department involved shall be given consideration in the order of their departmental seniority before consideration is given to other employees in that Labor Pool.

Section 2. (b) If the permanent vacancy or new job classification is not in a line of progression, it shall be filled in accordance with Section 1 above.

Section 3. Any employee selected to fill a permanent vacancy or new job classification shall be given a trial on the job. The employee's failure to fill the new job or vacancy satisfactorily shall not penalize him with any loss of seniority in the job classification from which he came and he shall be restored to it.

In the event the senior qualified bidder fails to fill the vacancy or new job, the next senior bidder will be given the opportunity. In the event the second bidder fails to fill the job, the Company may then fill the job at its discretion giving first consideration to employees within the department.

It is agreed that once a successful bid is made, employee shall remain on new job for at least six (6) months unless another higher rated job becomes available and no other employee bids for same.

Section 4. When a new job classification is created or a permanent vacancy occurs within any department, it shall be posted in the department for a period of three (3) days, excluding Saturdays, Sundays and holidays so that employees who may be eligible for the vacancy may apply for the job. The consideration to be given to employees in filling of permanent vacancies and new job classifications shall be given to eligible employees in accordance with Section 2 above among those employees who apply for the job within the said three (3) days posting period.

Should an employee be absent from work under any of the provisions of this Agreement (except those laid off in a reduction of forces) in the time prescribed in this bidding procedure, he may, if he so chooses, delegate to another employee the authority to bid for him for any va-

cancy in which he is interested. Such authority when vested shall be recorded in writing with the Personnel Department. The employee exercising this authority shall sign the name of the absent employee and shall initial the signature with his own initials as proof of the vested authority.

Reduction in Force

Section 1. When a reduction of forces is necessary, the Company will post the names of the employees to be laid off three (3) days, excluding Saturdays, Sundays and holidays, prior to such reduction unless cancellations of orders, changes in customers' requirements, breakdown, accidents, or other emergency makes such notice impossible. A copy of the posted list of employees to be laid off will be given to the local Union at the time of the posting. Any question or grievance arising from such reduction of forces shall be presented within the three (3) day period of any such notice, if possible.

Section 2. (a) When a reduction of forces occurs in any job classification in a line of progression, the employees affected will be demoted from each job classification in the line of progression in the reverse order of their departmental seniority. If an employee is laid off from his line of progression, he may enter the laborer classification which is in or is attached to his department by replacing any employee in such laborer classification with less plant service.

(b) Employees on a job classification not in a line of progression shall be laid off in the reverse order of their departmental seniority provided the senior employees are qualified to perform the work, except that the laid-off employees may enter the laborer classification which is in or is attached to their department by replacing any employees in such laborer classification with less plant service.

When a reduction of forces occurs in any laborer classification, the employees shall be laid off in reverse order of their plant service.

Section 3. An employee may elect to be laid off from the plant in lieu of being demoted in a reduction in force. In such case, the Company shall notify the employee to return to work only if work is available on the job from which the employee was laid off; if the employee should desire to return to work at any lower-rated jobs to which he may be entitled, he shall be required to notify the Company in writing of his intention and he shall be recalled at the first opportunity to which his seniority shall entitle him.

Recall to Employment and Restoration of Forces

Section 1. Employees recalled for work in the laborer or general helper classifications shall be recalled from lay-off in the order of their plant service.

Section 2. When a restoration of forces occurs in any job classification other than laborer or general helper, the employees previously removed from that job classification in a reduction in force shall be returned to that job classification in reverse order of their previous removal.

Section 3. The following procedure shall be used in recalling an employee to work:

(a) by telephone, if such telephone is listed with the Company;

(b) by telegram or certified letter.

The Company on request will furnish the Union with a list of employees and the method by which they have been recalled.

Section 4. It shall be the responsibility of all employees to furnish the Company with their proper mailing address

and telephone number, if any, and to keep such address current at all times.

Section 5. An employee receiving notification of a recall to employment must within three (3) days after the receipt of such notification by the employee, advise the Company whether he intends to return to work and must report for work within seven (7) days additional, or a total of ten (10) days from the date of receipt of notification, except that for reasonable cause an employee shall have a right to waive one recall to work.

Section 6. In the event there are employees on layoff and a job opening occurs, the Company will recall laid-off employees before hiring any new employees.

Permanent Transfers

Section 1. Any employee who transfers to another department on a permanent basis shall lose his previous departmental seniority and his departmental seniority shall begin in the new department from the time he is permanently transferred to the new position.

Section 2. When the Company combines departments or any portions thereof, causing employees to be permanently transferred to the combined department, departmental seniority of the employees transferred to the combined departments shall be established therein by merging (not dovetailing) their respective departmental seniority formerly held by each of them in their former departments. In such cases, if only a portion of a department is involved the employees affected may elect to remain in their old department or permanently transfer to the combined department.

Section 3. When the Company separates an existing department into two (2) or more departments, causing employees to be permanently transferred to the departments

thus created, the previously accumulated departmental seniority of such employees shall be transferred with them and established in the departments thus created.

Temporary Vacancies and Assignment

Section 1. Employees regularly assigned in one department shall not be assigned on a temporary basis to any other department except in cases of emergency or where other qualified employees are not present and available in the department in which the work is to be performed to fill the temporary vacancy or when there is a lack of work in the department in which the transferred employee is regularly assigned.

Section 2. If an employee is temporarily assigned to a job other than his own he shall be paid at the rate of the job to which assigned or at the rate of his regular job, whichever is higher.

Section 3. In all cases of filling of temporary vacancies with employees in the same department the Company shall, to the greatest degree consistent with efficiency of the operation and the safety of the employees, recognize the preferences of the employees within the department; in order of their seniority before any transfers are made from other departments.

GENERAL COUNSEL'S EXHIBIT 11

Submitted Jan. 25, 1967

Grievance Procedure

Replacing 12.1 thru 12.5 of Union Proposal

12.1—The Company will recognize a Grievance Committee elected by the Union members of not more than six (6) members, one of whom shall be the Chairman.

12.2—The Union agrees it will advise the Company in writing of the names of its Officers and Grievance Committeemen and upon change will advise the Company of such change.

12.3—Members of the Grievance Committee shall be afforded time off with pay for the actual time lost on their shift investigating grievances and attending grievance meetings with the Company.

12.4—A grievance is defined as any dispute between the parties as to the meaning and application of any provision of this Agreement.

12.5—Should any employee have any grievance, an earnest effort on the part of both parties shall be made to settle such grievance immediately in the following manner:

Step #1—Any employee having a grievance shall, after receiving permission from his foreman, take up said grievance with the Grievance Committeeman. Any grievance not reported within five (5) working days after the same occurs, shall no longer be considered a grievance. The foreman and the Grievance Committeeman and the grievant will make an earnest effort to settle the grievance promptly, and the foreman will give an answer within twenty-four (24) hours from the time the grievance was reported.

Step #2—If the grievance is not settled in Step #1 above, within two (2) working days after the decision of the department foreman the grievance shall be reduced to writing and the Grievance Committeeman and the Grievance Committee Chairman and the grievant shall meet with the Department Manager in an attempt to resolve the grievance. If the grievance is not submitted in writing within forty-eight (48) hours (excluding Saturday and Sunday) no grievance shall be deemed to exist. Department Manager will give answer in writing within two (2) working days.

Step #3—If grievance is not settled in Step 2 above, a meeting shall be arranged between a Management representative and the representative of the International Union along with the grievant and the Grievance Committee of the Local Union within five (5) working days from the receipt of answer in Step 2. The Union and the Company will meet promptly and endeavor to settle said grievance. The settlement of grievance made at this step, shall be set forth in writing and signed by authorized representatives of both the Company and the Union.

GENERAL COUNSEL'S EXHIBIT 12

2/7/67

Seniority Submitted

(C.) Promotions, layoffs, transfers and filling of permanent job vacancies shall be made on the basis of seniority provided the employee has the ability and physical fitness to perform the required work.

I. New jobs and job vacancies shall be advertised for bid on plant bulletin boards for a period of three (3) work days.

II. During the bidding period the Company may fill the new or vacant job with a qualified employee.

III. In the event an employee is transferred to a different job for the convenience of the Company, he shall be paid at the rate of his regular job or at the rate of the job to which he is transferred, whichever is higher.

IV. Layoff of an entire department or individual transfers either of which last for not over five (5) working days may be made without regard to seniority.

GENERAL COUNSEL'S EXHIBIT 13

(Letterhead of United Steelworkers of America,
District 36, Birmingham, Alabama)

March 1, 1967

Mr. Otto R. T. Bowden, Attorney
1056 Hendricks Avenue
Jacksonville, Florida

Re: Florida Machine and Foundry

Dear Mr. Bowden:

Along with the Union Negotiating Committee, I have reviewed the Company's bargaining position as of February 22, 1967. It has been considered by the membership. Moreover, the Union has evaluated the Company's negotiating posture since the outset of our many futile meetings with the Company representatives.

The Union is left with a single conviction: the Company has been attentive to its legal poise in attempting to establish bargaining effort rather than to its obligation to bargain in actuality.

The Company's last offer does not respond to several areas of the Union's legal and moral responsibilities to its membership. As Company counsel, you are well aware of those areas.

You are hereby advised that I have filed charges against the Company for failure to bargain in good faith and, further, that the Union has initiated a strike in support of those charges.

Finally, you are informed that the Union stands ready to continue its efforts to bargain with the Company in a

sincere attempt to reach a fair and honorable agreement for all concerned. I urge an early meeting.

Yours truly,

/s/ W. T. Edwards

W. T. Edwards

Staff Representative

WTE:jhg

cc: Mr. Howard Strevel

cc: Mr. Pat Burke

cc: Mr. James Nash

cc: National Labor Relations Board

cc: Federal Mediation and Conciliation Service

GENERAL COUNSEL'S EXHIBIT 14

(Letterhead of Hamilton & Bowden,
Jacksonville, Florida)

March 6, 1967

Mr. W. T. Edwards
United Steelworkers of America
P. O. Box 18144
Tampa, Florida 33609

Re: Florida Machine and Foundry Company

Dear Mr. Edwards:

Reference is made to your most recent letter in regard to the negotiations between your union and the Company.

In the first place, I do not feel that the meetings have been futile notwithstanding the fact that the union has used four separate negotiators which necessarily results in lost motion in any continuing matter.

We have resolved all items between the union proposal and the Company proposal with the exception of the following:

A. Economic Items—

Wages—Company offers 8¢; union demands 20¢

Daily overtime

Holidays (1 additional)

Insurance—Union proposal for Company to pay all cost.

B. Non-Economic—

1—Arbitration—question of language

2—No strike—question of language

3—Seniority—Believe we are in agreement

4—Physical Exam

5—Company Rules

6—Intent and Purpose Clause
(dependent on Arbitration Clause)

7—Check Off (This to be resolved in package).

We pointed out to you that clauses objected to by you had been acceptable to Steelworkers Union in other negotiations and in fact with other unions and therefore were not unique in their respective areas.

I read with interest your conclusions about the negotiations and I must for the record state that I disagree with you. I am of the opinion that your comments would be the same in every instance in which you did not receive all of your demands. Negotiations consists of good faith bargaining rather than total capitulation which you indicate is your criteria.

At our last meeting, my notes reflect that the meeting was adjourned and no future date set at your suggestion. Another meeting was subject to call from either party or the Federal Mediator.

The Company is agreeable to a meeting at any mutually agreeable time. I am enclosing a copy of this letter to the Federal Mediation and Conciliation Service, Mr. Nat Kazin, for his information. I assume Mr. Kazin will arrange the next meeting.

Very truly yours,

/s/ O. R. T. Bowden

O. R. T. Bowden

ORTB:lm

cc: Mr. Nat Kazin

National Labor Relations Board

Mr. T. M. Madison

Mr. T. W. Peacock

Mr. W. H. Pearsall

GENERAL COUNSEL'S EXHIBIT 15

(Letterhead of United Steelworkers of America,
District 36, Birmingham, Alabama)

March 21, 1967

Mr. O. R. T. Bowden
Attorney at Law
1056 Hendricks Avenue
Jacksonville, Florida 32207

Re: Florida Machine and Foundry

Dear Mr. Bowden:

The Union still hopes to settle the current labor dispute at the above named Company. Such a settlement can be reached by the early recognition by the Company that the Union's designated issues do not threaten either the rights of management nor the Company's competitive position in the market.

What is threatened in the Company's contractual offer is the existence of a successful Local Union which would be able to present itself at the bargaining table in the future.

We of the Union realize, of course, that the Company has, thus far in negotiations, tried to make certain that the Union would not be able to function in any contractual relationship. A strike resulted.

In an effort to demonstrate the Union's good faith, I have withdrawn the 8 (a) (5) charge, even though I am convinced of its merit, with the hope that the Company will take a new look at the few items preventing agreement.

In order to facilitate negotiations, I request that you prepare an up-to-date offer which incorporates the Company's most recent views on its proposed language of settlement. The Company's proposed agreement of December 19, 1966, has been modified somewhat and the Union's copies are crowded with marginal notes.

Finally, I suggest another meeting of the parties at an early date in order to try once more to resolve the few outstanding issues.

You may contact me or Mr. Kazin.

Very truly yours,
W. T. EDWARDS
Staff Representative

WTE:jhg

cc: Mr. Howard Strevel
cc: Mr. Pat Burke
cc: Mr. James Nash
cc: FMCS (Jacksonville)
cc: NLRB

GENERAL COUNSEL'S EXHIBIT 16

(Letterhead of Hamilton & Bowden, Jacksonville, Florida)

March 28, 1967

Mr. W. T. Edwards
United Steelworkers of America
4302 Henderson Boulevard
P. O. Box 18144
Tampa, Florida 33609

Re: Florida Machine and Foundry Company

Dear Mr. Edwards:

I am in receipt of your recent letter in which you tried to embellish the demands of the union and downgrade the sound positions taken by the Company. Such literary window dressing cannot obviate the true facts which will prevail in the end as surely as night follows day.

I am somewhat puzzled by your request for "an up-to-date" offer which incorporates the Company's "most recent view" on contract proposals. Inasmuch as our current view is the same as our stated position at the March 14, 1967 meeting, I am at a loss as to how to attempt to comply with your request. Perhaps additional explanation from you would clear up the matter.

In the meanwhile, I would like to be advised if the union position on the open items is still the same as stated by you at our last meeting. Your comments will be appreciated.

Very truly yours,

/s/ O. R. T. Bowden
O. R. T. Bowden

ORTB:lm

cc: Mr. T. M. Madison
Mr. T. W. Peacock
Mr. W. H. Pearsall

GENERAL COUNSEL'S EXHIBIT 17

(Letterhead of United Steelworkers of America,
District 36, Tampa, Florida)

April 3, 1967

Mr. O. R. T. Bowden, Attorney at Law
1056 Hendricks Avenue
Jacksonville, Florida 32207

Re: Florida Machine & Foundry Co.

Dear Mr. Bowden:

I have read your letter of March 28, 1967, and have taken note of its poetic overtones. I have never been accused of embellishment and literary window dressing, unless such charges were made sometime toward the end of a long and convivial evening at the bar.

Nevertheless, I single out two questions you pose:

Question 1: How to comply with my request for an "up-to-date" offer?

Answer: Have the Company's offer retyped and include all points of agreement, many of which are presently marginal notes or separate documents.

Comment: This is urgently needed and I suggest your earliest possible compliance.

Question 2: Has the Union's position changed any since our last meeting?

Answer: As I told you at the meeting of March 14, 1967, the Union is quite willing to bargain on any and all open items. Your rigid position on the same points precludes genuine bargaining. I make a distinction between negotiating and capitulating.

In short, the Union is quite prepared to resume collective bargaining with the earnest desire to reach an agreement which is both responsive to the success of the business and to the honorable, traditional obligation of the Union to its members.

Advise me of a date when your client would be willing to resume negotiations.

Yours truly,

/s/ W. T. Edwards
W. T. Edwards
Staff Representative

WTE:jhg

cc: Mr. Howard Strevel
cc: Mr. Pat Burke
cc: Mr. James Nash
cc: National Labor Relations Board
cc: Federal Mediation and Conciliation Service

GENERAL COUNSEL'S EXHIBIT 18

(Letterhead of Hamilton & Bowden, Jacksonville, Fla.)

April 7, 1967

Mr. W. T. Edwards
United Steelworkers of America
P. O. Box 18144
Tampa, Florida 33609

Re: Florida Machine & Foundry Co.

Dear Mr. Edwards:

I am in receipt of your letter with your thoughts on what you request that I do in reference to future negotiations for the Company.

In answer to your Question No. 1, we will proceed to rework the Company's proposal indicating the agreed parts and such changes as we understand the present posture of the parties.

In reference to your Question No. 2, the Company is quite willing to bargain on any and all open items and is prepared to resume collective bargaining with an earnest desire to reach an agreement which is responsive to the success of the Company.

In line with the foregoing, I would like to request that you have the union's proposal retyped and include all points of agreement, many of which are presently marginal notes or separate documents.

It is my judgment that if each of us do these things and exchange these updated proposals and agreements prior to the next meeting and reconcile any differences we can then have more time for negotiations rather than discussions over past points of agreement.

Please advise me when you think the union's proposal as requested above may be available.

Very truly yours,
/s/ O. R. T. Bowden
O. R. T. Bowden

OORTB:lm

cc: Mr. T. M. Madison
Mr. T. W. Peacock
Mr. W. H. Pearsal

GENERAL COUNSEL'S EXHIBIT 19

(Letterhead of United Steelworkers of America,
Tampa, Florida)

April 11, 1967

Mr. O. R. T. Bowden
Attorney at Law
1056 Hendricks Avenue
Jacksonville, Florida 32207

Re: Florida Machine and Foundry

Dear Mr. Bowden:

I have your letter of April 7, 1967, in which you suggest an exchange of retyped contract proposals prior to a resumption of negotiations.

The Union has submitted all of its language proposals in writing. In trying to reach agreement with the Company, however, the Union has made every effort to accommodate the Company in working from the Company's proposed articles. For this reason, you are in a much better position to incorporate the areas of agreement in a retyped draft of the Company's offer, putting the items of agreement in order you intend.

As far as the issues are concerned, the Union's language on the non-economic provisions are contained in the original Union proposal. The economic issues are clear.

I do not agree that negotiations should await an exchange of documents. I did not suggest negotiations be delayed until you have your offer retyped. Your suggestion would have that effect and is further evidence of deliberate stalling.

The Union is ready to negotiate at any time the Company sees fit to arrange a day and hour. I asked for a retyped Company proposal simply because of the present disarray in the form of that offer. I request it again for the third time. I do not plan to retype it for you and then encounter objections because of having done so.

I still await a listing of possible dates when the Company would be ready to meet with the Union in an attempt to reach agreement.

Very truly yours,
W. T. Edwards
Staff Representative

WTE:jhg

cc: Mr. Howard Strevel
Mr. Pat Burke
Mr. James Nash
National Labor Relations Board, Tampa
Federal Mediation and Conciliation Service,
Jacksonville

GENERAL COUNSEL'S EXHIBIT 20

(Letterhead of Hamilton & Bowden, Jacksonville, Fla.)

April 14, 1967

Mr. W. T. Edwards
United Steelworkers of America
P. O. Box 18144
Tampa, Florida 33609

Re: Florida Machine & Foundry

Dear Mr. Edwards:

Your letter dated April 11, 1967, makes several statements which I think should be clarified for the record. In the first instance, you suggest "the union has submitted all of its language proposals in writing." This infers that you do not have a complete Company proposal on all open items. To set the record straight, you have a complete written proposal from the Company on all open items and, therefore, I do not understand why you seek to create this inference.

In reference to your paragraph as far as the issues are concerned, the Company's language on non-economic items are contained in the original Company proposal. I agree with you that the economic issues are clear and need no further clarification. Any information which the Company has is also in the possession of the union. You are in just as good a position to do what you request as the Company is. The fact that you refuse to take part in any effort to ascertain if there is a clear understanding as to areas of agreement indicates to me that you are not serious in this request and only writing these letters for the purpose of window dressing and have no serious intention of negotiating. I do not feel that this information is material to you and that you are using this device as a means of stalling.

The Company has always stood ready to negotiate with the union upon mutually agreeable times and I am directing a copy of this letter to the office of Mr. Nat Kazin of the Federal Mediation Service so that he may arrange a meeting to suit the parties' convenience. I do not see how it serves any useful purpose for this continuous exchange of letters and do not feel that we have accomplished anything by these writings. We will therefore await the setting of a mutually agreeable time and place by the Federal Mediator and will take up the negotiations as we left them at the last meeting which you requested which was many weeks ago.

Very truly yours,

/s/ O. R. T. Bowden

O. R. T. Bowden

ORTB:lm

cc: Mr. T. M. Madison
Mr. T. W. Peacock
Mr. W. H. Pearsal
Mr. Nat Kazin

GENERAL COUNSEL'S EXHIBIT 21

May 31, 1967

Certified Mail

Return Receipt Requested

O. R. T. Bowden

Attorney at Law

1056 Hendricks Ave.

Jacksonville, Florida 32207

Re: Florida Machine & Foundry Co.

Dear Mr. Bowden:

Reports have reached me that the above named company is presently paying certain strike breakers at rates of

pay higher than those paid striking employees who performed the same work prior to the strike.

Please forward me the names, job titles, and rates of pay for each employee of the bargaining unit who is presently employed.

Please send me the information concerning the Area Wage Rate Study made by the company which prompted the offer of raises for employees of the following scheduled jobs: Electric Furnace, Pattern Makers, Machinists and Maintenance Mechanics.

Yours truly,

James L. Nash
Staff Representative
4250 Lenox Ave.
Jacksonville, Florida

JLN:msr

cc: Mr. Howard Strevel
cc: Mr. Pat Burke
cc: Mr. W. T. Edwards
cc: NLRB, Tampa, FL
cc: Federal Mediation & Conciliation Service, Jacksonville, FL

GENERAL COUNSEL'S EXHIBIT 22

(Letterhead of Hamilton & Bowden)

June 7, 1967

Mr. James L. Nash
United Steelworkers of America
4250 Lenox Avenue
Jacksonville, Florida

Re: Florida Machine & Foundry Co.

Dear Mr. Nash:

I acknowledged receipt of your letter stating that you had received reports that the Company is exceeding wage rates which were paid prior to the strike. I have forwarded a copy of your letter to the Company, and asked them to advise me in this regard. As soon as I receive such information, I will be back in touch with you.

Very truly yours,

O. R. T. Bowden

ORTB:lm

cc: Mr. Tom Madison

GENERAL COUNSEL'S EXHIBIT 23

(Letterhead of United Steelworkers of America)

July 27, 1967

Certified Mail, Return Receipt Requested

Mr. O. B. T. Bowden

Attorney at Law

1056 Hendricks Avenue

Jacksonville, Florida 32207

Re: Florida Machine & Foundry

Dear Mr. Bowden:

Representative James Nash has called to my attention the fact that there has been no response from the above-named Company regarding his request for information outlined by letter to you on May 31, 1967. Please advise the Company again to make this data available.

Since there has been no further bargaining meetings between the parties for several weeks, I assume Mr. Kazin has been unable to arrange a further meeting with you. Mr. Kazin is aware the Union is prepared to meet at any time.

The Union does not consider negotiations at an impasse. We have always been willing to modify our proposal at any time we felt the Company would show a similar willingness to modify its position. The issues are largely those which relate to the Union's continued existence as an effective voice of the bargaining unit personnel.

The Union reached the point in negotiations where it became obvious that a continuing erosion of employees' rights would not persuade the Company to modify its position in the slightest. This factor was one of the causes of the unfair labor practice strike.

Would you advise your client to review its position, giving considerable more attention to the legitimate objectives of the Union?

Very truly yours,

/s/ W. T. Edwards

W. T. Edwards

Staff Representative

WTE:jhg

cc: Mr. Howard Strevell

cc: Mr. Pat Burke

cc: Mr. James Nash

cc: National Labor Relations Board

cc: Federal Mediation & Conciliation Service

GENERAL COUNSEL'S EXHIBIT 24

(Letterhead of Hamilton & Bowden,
Jacksonville, Florida 32207)

July 31, 1967

Mr. W. T. Edwards
United Steelworkers of America
P. O. Box 18144
Tampa, Florida 33609

Re: Florida Machine & Foundry

Dear Mr. Edwards:

Reference is made to your letter of July 27 in regards to negotiations meetings between the Company and the union. You mentioned Mr. Kazin's knowledge of your attitude and I would like to point out to you that Mr. Kazin has been out of town for some time, which accounts

for the reason no meeting has been set up. In this regard, I have met with you and Mr. Nash recently and neither of you mentioned anything in those meetings with regard to further meetings with Florida Machine and Foundry.

We have carefully considered the letter which we received from Mr. Nash on May 31, 1967, and have been unable to find any instance in which any current employee is receiving any rate in excess of the rate for the job the strikers received before they participated in the strike. If you have any specifics in this regard we will be glad to check them out and advise you of the results.

I must remind you that negotiations is a two-way street and the fact that you are unable to get a Company commitment for everything which you think is desirable does not mean that the Company "ipso facto" is not bargaining in good faith. I understand that you are attempting to represent the employees, and the Company representatives are attempting to do the same thing for the Company. The Company also must consider issues which relate to its continued existence as an effective voice in the bargaining picture. It is not our purpose to participate in a continuing erosion of all Company rights in these negotiations. I assume sometime in the future Mr. Kazin will contact the Company and when he does, we will make arrangements to meet with your union again.

Very truly yours,

/s/ O. R. T. Bowden

O. R. T. Bowden

OETB:lm

cc: Mr. T. M. Madison
Mr. T. W. Peacock
Mr. W. H. Pearsal

GENERAL COUNSEL'S EXHIBIT 25

(Letterhead of United Steelworkers of America,
Tampa, Florida 33609)

August 8, 1967

Mr. O. R. T. Bowden
Attorney at Law
1056 Hendricks Avenue
Jacksonville, Florida 32207

Re: Florida Machine and Foundry Corporation

Dear Mr. Bowden:

After some reflection on our bargaining meeting yesterday, August 7, 1967, I am impelled to write you in an attempt to clarify a point or two regarding the bargaining situation with the above named company.

First, as regards wages, you were correct in stating that I had proposed 18¢ per hour for the less skilled employees during the meeting of May 1, 1967. I recalled very clearly discussing the reduced offer with the Union Committee but believed at the moment that we had not made the reduction when the Company had itself made no wage offer of improvement.

To save time, I take this opportunity to advise you that the Union will and hereby does, reduce the 18¢ per hour proposed increase for the lesser skilled employees to 15¢ per hour. I make this concession to encourage some manner of response in the remaining unresolved issues.

Next, and again to expedite negotiations, I request that you advise me as quickly as possible the name of employees whom the Company considers guilty of such misconduct during the strike as to prevent their being re-

turned to work. At the same time, please inform me of the nature of each designated employee's misconduct.

I remind you that I have previously requested the following information:

1) The names and rate of pay of each employee presently at work, along with the job to which they are assigned. I made this request because of substantial reports that striker replacements are being paid more in some instances than were the strikers who were replaced.

2) The nature and results of the survey made by the Company in arriving at its wage offer for the skilled employees for whom the Company offered wage increases.

3) The names of each employee who engaged in the strike who has been returned to work since the termination of the strike.

I believe your early response to the above requests and your consideration of the reduced wage proposal in relation to remaining issues will carry negotiations forward considerably.

Yours truly,

/s/ W. T. Edwards

W. T. Edwards

Staff Representative

WTE:mg

cc—Mr. Howard Strevel

Mr. Pat Burke

Mr. Jerome Cooper

National Labor Relations Board

Federal Mediation and Conciliation Service

(Mr. Earnest Dean)

(Mr. Nathan Kazin)

RESPONDENT'S EXHIBIT 1

Meeting #1

- I. October 27, 1966—Seminole Hotel—2:00 P. M.
 - II. Attendance:
 - United Steelworkers of America**
 - Ike Lang—Florida Machine & Foundry Co.
 - Companies**
 - Otto Bowden, Attorney
 - T. M. Madison
 - T. W. Peacock
 - W. H. Pearsall
 - III. No other representations from Committee or United Steelworkers of America showed.
-

RESPONDENT'S EXHIBIT 2

Meeting #2

- I. November 28, 1966—Seminole Hotel—2:00 P. M.
- II. Attendance:
 - United Steelworkers of America**
 - Harold Mays—Fleco Corporation
 - Ike Lang—Florida Machine & Foundry Co.
 - Jesse Hunter—Florida Machine & Foundry Co.
 - John Overman—Fleco Corporation
 - W. T. Edwards—Staff Representative—United Steelworkers of America
 - Companies**
 - Otto Bowden, Attorney
 - T. M. Madison
 - T. W. Peacock
 - W. H. Pearsall

III. General:

- A. Edwards made statement rates were suggested by Pittsburgh.
- B. Edwards said they requested information from their Economics Department in Pittsburgh then tempered this with their own estimates.
- C. Edwards made the statement that as far as his Union was concerned, our company should pay the same labor rates that a similar company is paying in other parts of the country, making specific reference to Northern communities. In reply to our remarks that our rates were in line with the rates prevailing in the Jacksonville area he indicated that this should not be the governing factor and commented that butter cost the same in all parts of the country.
- D. Lang stated he had a Government Survey conducted in 1962 of iron and steel workers and we were below these rates.
- E. Edwards used word "arbitrable".
- F. Union wants one (1) year agreement.
 - (1) They don't want working supervisors.
 - (2) Union requested following information:
 - (a) List of employees giving name, classifications, date of employment, rate of pay, department, age and number of dependents.
 - (b) Copy of Pension Plan and copy of our insurance policy.

Meeting adjourned approximately 3:30 P. M. Next meeting set for December 19th at 10:00 A. M.—Seminole Hotel.

RESPONDENT'S EXHIBIT 3

Meeting #3

- I. December 19, 1966—Seminole Hotel—10:00 A. M.
- II. Attendance:
 - United Steelworkers of America**
 - Jesse Hunter—Florida Machine & Foundry Co.
 - Ike Lang—Florida Machine & Foundry Co.
 - John Overman—Fleco Corporation
 - Harold Mays—Fleco Corporation
 - W. C. McCall—Staff Representative—United Steelworkers of America
 - Companies**
 - Otto Bowden, Attorney
 - T. M. Madison
 - T. W. Peacock
 - W. H. Pearsall
- III. The Company presented the following information to the Union:
 - A. List of employees giving name, classifications, date of employment, rate of pay, department, age, and number of dependents.
 - B. Copy of Company pension plan.
 - C. Copy of Company's master group insurance policy.
 - D. Company's proposed agreement.
- IV. Intermission for Union to review above information. Lasted from 10:15 A. M. until 11:00 A. M.
- V. General Comments on our Proposed Agreement.
 - A. McCall made the statement that he negotiated similar agreements in the automobile industry in 1938.

B. McCall stated that the Union would want a "Successor Clause", stating that they would want protection in case the company should decide to go out of business.

C. **Article #2—Management Rights**

They will not accept—they cannot agree on our management rights.

D. **Article #3—Company Rules**

They cannot agree. Overman stated that he was never called into the office until the Union came in. McCall claims rules are subjected to change and should not be part of an agreement.

E. **Article #4—Union Membership is Voluntary**

McCall said they agree in principle if they can get check off.

(1) Union Activity—They agree if they can get check off.

(2) Union Visitation—They say that is okay.

F. **Article #5—Hours of Work**

McCall says they need the shift starting and stopping times. McCall says that part-time employees are not fair to permanent employees.

With specific reference to our operation, McCall stated that he does not like our practice of hiring part-time employees in the Machine Shop. They say overtime is not being spread around fairly and they contend that moonlighting is unfair to the men. McCall stated further that he did not like our practice of moving men back and forth between Florida Machine & Foundry Co. and Fleco Corporation.

G. Article #6—Seniority

They feel that man should have right to switch from various classifications.

Overman said that Robert Collins was not treated fairly because Jim Less came to work with the company after Robert and is making more money.

They will study this Article with the idea of giving a little and advising us to study the Article with the idea of giving a lot.

Under sub-caption 5 of Section (E) of Article #6—

McCall says that this section proves that the Company has not love for its men by this type of proposal . . . (their layoff or illness for a period of three (3) months or more shall result in a man's seniority being broken).

Ike Lang commented as follows. "That this whole thing involves employer, employee relationships and that is why we are here today".

H. Article #7—Grievances

They will not agree to non-compulsory arbitration and we take the position that we cannot agree to compulsory arbitration.

I. Article #8—Arbitration

They reiterated that they cannot agree to non-compulsory arbitration and the pros and cons were discussed by the group at some length.

J. Article #9—Insurance

The Union asked the Company to produce figures on the cost of the Pension Program and the cost of the Group Insurance Program. They said they wanted to know how much money is in the

vested portion of the Pension Plan and where the money is. It was suggested to the Union by the Company that a special meeting be set up for the purpose of discussing our group insurance program and our pension plan and that the Company's consultant in this field, Mr. Elliott Horowitz, be invited to attend this meeting inasmuch as he was so familiar with the details of these two programs. This was agreed to by the Union.

K. Article #10—Absenteeism and Tardiness

Agreed on with the addition of (illness of more than three (3) days shall be evidenced by a doctor's certificate).

L. Article #11—No Strike Clause

They do not agree. They prefer their No Strike Clause.

M. Article #12—Contract Constitutes Rights Agreement of Parties

Will discuss later.

N. Article #13—Vacations

They cannot agree—said hour requirement is too long. The Union wants 1500 hour requirement in lieu of 1800 hour requirement. They want us to look at the number of weeks vacations.

O. Article #14—Holidays

They want Friday after Thanksgiving and Christmas Eve in addition to ones we propose.

P. Article #15—Break Periods

They want a wash up time at the end of the shift.

Q. Article #16

R. Article #17—Miscellaneous

Safety—They take the position that we don't have a Safety Program. Overman cited an example of a Fleco crane that was reported inoperative and upon which no corrective action was taken. He said the outside crane in the Fleco Building has no brake on the hoist unit and nothing has been done. Said you must push in the "up" button to hold the lift in place. Lang says there is an electric cable in the Machine Shop that should be covered and that this has been brought up to Management and no action has been taken.

Lunch break from 12:55—2:01.

S. Article #18—Physical Examinations

They will look at this and get back with us later.

T. Article #19—Job Classifications and Wage Rates

To be discussed later.

U. Article #20—Work by Supervisors

The Union indicated that this clause was probably all right but that they would discuss it further and get back with us.

V. Article #21—Leaves of Absences

This article is mutually agreed upon with the change of from one (1) to two (2) weeks for Union Conventions.

W. Article #22—Reporting Pay

They want four (4) hours.

X. Article #23

The Union indicated this clause was acceptable to them.

Y. Article #24—Protective Devices and Equipment

They say we don't give them a good deal. Claim we make a mark up. The Union specifically stated that it was their opinion that the cost of welding helmets, purchased by the men, was marked up by the Company. It was stated that Mr. Cooner paid \$11.00 or \$12.00 for a special helmet. After lengthy discussions assuring them that we do not make a mark up, the Article was agreed upon.

Z. Article #25—Left open.

Back to Article #14

Overman says a welder burns from 1# to 4# of welding rod per day in the shipyard and he says that we have reduced our welding costs by 45% in the last year. Lang again brought up the Government Survey of 1962—Foundries in the Southeast—and how far behind we were. We took the position that our wage rates are competitive for classifications in this area as evidenced by survey we made.

Meeting adjourned at 3:00 P. M.

RESPONDENT'S EXHIBIT 4

Meeting #4

I. January 6, 1967—Seminole Hotel—10:00 A.M.

II. Attendance:

United Steelworkers of America

Ike Lang—Florida Machine & Foundry Co.

Jesse Hunter—Florida Machine & Foundry Co.

Harold Mays—Fleco Corporation

John Overman—Fleco Corporation

W. T. Edwards—Staff Representative—United Steelworkers of America

W. C. McCall—Staff Representative—United Steelworkers of America

Companies

Otto Bowden, Attorney

T. M. Madison

T. W. Peacock

W. H. Pearsall

III. General:

McCall does all the talking—wants to start at the beginning. They discussed a Successor Clause which they want in agreement.

Arbitration—They insulted our proposal on arbitration. Lang stated all grievances in the past have been ignored and they would have to go to court to settle any difference and this would take years. (Ike got ruffled). Ike Lang then made the following statement, "We will have our Arbitration Clause. This is the way it's going to be". Discussion on court action followed.

McCall asked about Paragraph (3) of our Arbitration Clause. Does the contract cease or end—discussion

followed. Ike insisted on arbitration and got emotional.

Check Off—With respect to the Union's request for check off, Mr. Bowden stated, "we have denied it at this time".

Seniority—After discussion, they said they will go for departmental seniority rather than plantwide seniority and suggested that we substitute work "department" for "plantwide" throughout the clause. We said that our clause properly covers seniority. We agree to 11.6 of their Seniority Article.

Recessed at this point to consider whole section.

Reconvened at 11:10 A.M.

Their Seniority Clause—The following points were discussed on their Seniority Clause:

11.6—Okay

11.7—Okay

11.8—Change word "reasonable" to "acceptable".

11.9—By departments + one tryout per vacancy — no lateral or down bidding. One (1) successful bid per year. Bidding confined to next higher classification. Only one (1) bid per job—then Company selects man.

Overman says Luke Morgan promoted to Cab Guard Set-up a man who couldn't even read a tape.

The group discussed question of the Labor Pool and how to handle it in seniority.

11:30—Had a break for Lunch until 1:00 P.M.

The whole Seniority Clause was deferred for discussion at the next meeting. The Union indicated

that they would work out some language on Seniority, following our suggestions, and submit it to us at the next meeting.

Article #9—Insurance

It was agreed by the group that the Company insurance specialist, Elliott Horovitz, would be present at the next meeting to discuss the details of our present hospitalization insurance and pension programs. They made the statement that they think the room rate could be improved in the hospitalization plan. The Union stated that it was interested in the cost of our insurance plan and whether it can be improved. It was again reiterated by the Union that the \$9.00 a day room rate was the principle weakness in the plan.

Article #8—Arbitration Clause

The Union reiterated their desire for a compulsory arbitration clause. The Company, in turn, stressed their position of a non-compulsory arbitration clause.

Article #7—Grievances

Overman believes that one (1) grievance committeeman should represent 25 men. A lengthy discussion was conducted on Steps 1, 2 & 3 of the Grievance Procedure. A general meeting of the minds was attained and McCall was going to rework the whole section and resubmit it at the next meeting.

Article #11—No Strike Clause

The Union stated that they did not like our No Strike Clause. Specifically, they objected very strongly to our Paragraph (E) which stated that "the parties agree that in the event of a breach of the Union's No Strike promise contained in this article, such breach shall not be referable to the grievance procedure herein, but shall be the subject

of a suit or action in Federal or State Court at the Company's discretion". The Union agreed that the objective was reasonable but still strongly opposed the Company's right to appeal directly to the courts in the case of a violation of the contract . . . such as an illegal strike. The Company maintained that in the event of an illegal strike we would want the right to get the courts to enjoin the strike or a picket line. Edwards then stated that he felt their proposal was reasonable and was more in line with their other contracts and that he was certain that our clause would be unacceptable to the Union's legal department in Pittsburgh. He then stated that he wanted to work out a reasonable agreement and observed that among other things he noticed that we have no check off in our proposal and again stated that they cannot agree to this particular No Strike Clause.

Article #12—Contract Constitutes Rights Agreement of Parties

They will discuss and get back with us later.

Article #13—Vacations

They want us to consider 4 weeks after 15 years of service and 1500 hours for vacation eligibility. We made proposal of reducing vacation eligibility requirement from 1800 hours to 1700 hours. The Company indicated that they would reflect further on the Union's proposal of 4 weeks after 15 years.

Article #20—Work by Supervisors

They claim supervisors should be in bargaining unit and after a lengthy discussion it was determined that the supervisors are not in the bargaining unit.

Article #18—Physical Examinations

They cannot agree on this for the older employees.

Prior to adjourning, McCall suggested that we look at the following articles in their proposal:

Articles No. 9, 13, 18 and 23.

Meeting adjourned at 4:00 P.M.

RESPONDENTS' EXHIBIT 5

Meeting #5

I. January 25, 1967—Seminole Hotel—10:00 A. M.

II. Attendance:

United Steelworkers of America

John Overman—Fleco Corporation

Frank McCanless—Fleco Corporation (Replaces Lang)

Harold Mays—Fleco Corporation

Jesse Hunter—Florida Machine & Foundry Co.

W. T. Edwards—International Representative—United Steelworkers of America

W. C. McCall—International Representative—United Steelworkers of America

James Nash—International Representative—United Steelworkers of America

Companies

Otto Bowden, Attorney

Elliott Horovitz, Employee Benefit Consultant

T. M. Madison

T. W. Peacock

W. H. Pearsall

III. Employee Benefits:

A. Group Insurance Program

Mr. Horovitz explained the Group Insurance Program and then answered questions raised by the Union Committee.

- (1) McCanless answered Nash's question of how much a semi-private room cost in this area.
- (2) McCall asked question of cost of plan per employee. Elliott answered.
- (3) Harold spoke up on coverage. Asked about age limit of children. Questioned that Gulf Life gave same coverage as old Blue Cross plan. He thought he remembered the room rate as being \$12.00 per day rather than \$9.00 per day. Elliott Horovitz and Will Pearsall explained our changing from Blue Cross to Gulf Life, the reasons why, and that there was no detrimental change in the coverage. Harold says Gulf Life is hard to get your money from and that they are slow to settle. He doesn't remember filling out all the papers that he has to with Gulf Life and waiting six (6) months to get his money. (McCall stopped this discussion and asked for an explanation of the Pension Plan).

B. Pension Plan

Mr. Horovitz explained the Company's Pension Plan and then answered questions raised by the Union Committee.

- (1) Mr. Nash requested that copies of all Pension Plan data filed with the Internal Revenue Service be filed with the Union also.
- (2) Mr. McCall asked if we had ever made any cash settlements or if anyone had retired under this plan. He was told that since the plan had been in effect since 1942, anyone retiring since that date had received benefits under the plan. Harold Mays injected that he had

left the Company at one time and had received a cash payment representing his vested interest in the plan at that time.

C. General Comments prior to Elliott's leaving:

McCanless said that he had never used the plan but that he wanted an explanation of the Deductible portion of the insurance plan and Elliott explained this.

D. At 10:40 A. M. the Union stated that they were satisfied with the information on the Group Insurance Program and the Pension Plan and Mr. Horovitz was then excused from the meeting.

E. Following Mr. Horovitz departure, Mr. McCall made the following statements with respect to the Company's group insurance program:

- (1) The daily room rate should be increased.
- (2) The Surgical Schedule should be increased.

F. Miscellaneous:

The Union brought up Overman's quitting. They wanted to negotiate our putting him back to work. Overman says he reported the machine being broken down and that he did tell Mr. Marroquin that he was leaving. At this point Otto mentioned that since a formal charge had been filed with the N.L.R.B., that this was not a matter for discussion at the bargaining table. Overman wanted to know what we were going to do about getting adequate insurance coverage. We said that we have no proposal at this time. The discussion then evolved into the General Economic Package.

- (1) Mr. Bowden asked Mr. McCall if he knew how much money the Union's proposal involved

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- (1) Mr. Bowden asked Mr. McCall if he knew how much money the Union's proposal involved

just in such items as wages, vacations, and holidays. Mr. McCall replied that he did not know and that his group had not tried to figure it out. Mr. Bowden then advised Mr. McCall that the Union's proposal involved approximately \$500,000 in these money items alone.

- (2) Various hourly rate data was then presented to the Union. For example:
 - (a) The average rate for 1966 for all Florida Machine & Foundry Co. hourly employees amounted to \$2.175.
 - (b) The average hourly rate for all Fleco Corporation hourly employees during 1966 amounted to \$2.314.
 - (c) The above rates were determined by dividing the total dollars paid for time actually worked by the total number of hours worked.
- (3) Mr. Bowden commented that it was the Company's opinion that these rates were reasonable when compared with other rates in similar occupations in the Jacksonville area and that it was not considered necessary to increase these rates.

Harold Mays then made the statement that you could come to his house for dinner and see why more money was needed.

The Union handed out its revised proposals on Seniority and Grievance Procedures. This was followed by a break for the Company to review these proposals. The discussion resumed after the break as follows:

(a) Grievance Procedure

The Company indicated that the Grievance Procedure as revised by the Union was considered to be acceptable.

(b) Seniority

- (1) The Union was asked what they meant by the phrase "lines of progression" in their proposal and it was determined that they meant our Apprenticeship Program. A general discussion on Seniority followed and the Company advised the Union that they would have to take their revised proposal which was rather lengthy and complex under advisement and it was agreed that the subject would be deferred until the next meeting.

At this point it was 11:55 and it was agreed to break for lunch.

The meeting was reconvened at 1:07 P. M.

G. A General Contract Review took place as follows:

- (1) Article #2 was discussed and the Company indicated that their position remained unchanged.
- (2) Article #3 was discussed and the Company indicated that their position remained unchanged.
- (3) Article #5 was discussed. With reference to hours of work, Mr. McCall asked that we consider the following:

Time and a half after eight (8) hours in one day.

Time and a half on Saturday.

Double time on Sunday.

The Company indicated that they would consider Mr. McCall's request.

H. Article #8—Arbitration

(Nash came to life here). Nash says he has never heard of such a thing as a contract with noncompulsory arbitration and that it is in effect, a non-enforceable contract. A heated discussion between Mr. Bowden and Mr. Nash on the pros and cons of compulsory and noncompulsory arbitration and arbitrators, etc. followed.

Mr. Edwards then took the floor and accused Mr. Bowden of not bargaining properly by meeting every two weeks and made the statement that if the Company was not serious about these negotiations that there would be a confrontation between the Union and the Company. Mr. Edwards stated that his committee was alarmed by the way the negotiations were going and that they were going to have to make a decision soon in conjunction with the International Headquarters in Pittsburgh as to whether to call a strike. Mr. Edwards then indicated that if they did decide to call a strike that his Union would "fight like hell to win it". He then commented that he realized that the Company would do the same thing and that they were fully aware of our experience back in 1958. Mr. Edwards then said that the Union didn't want to run the Company but that they did want to get all that they can for the men. Mr. Edwards' posture and tone throughout this entire dissertation was extremely threatening.

Mr. McCall then injected that if the Company had any proposals to make in regard to wages, that this was the time to make it.

Mr. Bowden then indicated that although it was the Company's belief that the majority of its rates were well in line with the prevailing rates in this area, that at lunch it had been brought to his attention by the other members of the Committee that some recent wage adjustments in the area had come to the Company's attention and that in view of this situation and consistent with the Company's desire to remain in line with going wages in the area, that some adjustments would now be proposed. Mr. Bowden then proceeded to make the following proposals:

- (1) Increase the electric furnace operators top rate to \$3.00 per hour.
- (2) Increase the journeyman patternmakers to \$3.10 per hour
- (3) Increase the journeyman machinist top rate to \$3.00 per hour.
- (4) Increase the journeyman maintenance man top rate to \$2.85 per hour.

In addition to the wage adjustments just outlined, Mr. Bowden told the Union Committee that the Company agreed with them that the daily room rate in the Company's group insurance program was too low. He indicated that the changes in the hospital situation over the past year or so which Mr. Horovitz had referred to that morning had changed the cost picture considerably. He then indicated that the Company would like to increase the daily room rate from \$9.00 a day to \$15.00 a day.

What Mr. Bowden was referring to was Mr. Horovitz's remarks that morning to the group to the effect that the tendency toward integration in our local hospitals together with the trend away from the utilization of Duval Medical Center by many of the Company's colored employees at relatively low cost, together with general increases in the hospital's daily room rates had the effect of making the \$9.00 a day room rate obsolete.

It was further suggested by Mr. Bowden that the Company and the Union split the difference between two and four hours guaranteed reporting pay (Article #22 of the Company's proposal) and settle for three (3) hours.

Prior to adjourning, McCall urged the Company to come up with something "or else" in threatening tone.

Overman again stated that Fleco Corporation improved its welding by 45% and that the inner-shield was hotter and had more splatter.

Meeting adjourned at 2:21 P. M.—Next meeting set for 10:00 A. M.—Seminole Hotel February 6, 1966.

RESPONDENT'S EXHIBIT 6

Meeting #6

I. February 7, 1967—Federal Building—10:30 A. M.

II. Attendance:

United Steelworkers of America

John Overman—Fleco Corporation

Frank McCanless—Fleco Corporation

Harold Mays—Fleco Corporation

Jesse Hunter—Florida Machine & Foundry Co.

W. T. Edwards—International Representative—

United Steelworkers of America

James Nash—International Representative—

United Steelworkers of America

Federal Mediator—Mr. Kazin

Company

Otto Bowden

T. M. Madison

T. W. Peacock

W. H. Pearsall

III. Since this was the first meeting in which he was a participant, Mr. Kazin, the Federal Mediator, asked for a general review of what had transpired in the negotiations to date. Mr. Edwards volunteered to begin by reviewing the negotiations from the Union's point of view. He reviewed the various articles in the Company's proposal:

1. **Article #2—Management Rights Clause.** Mr. Edwards indicated that the Union was in agreement with our proposal with the exception that it should be stipulated that subcontracting by the Company will not be done to discriminate against Union members.

2. **Article #3—Company Rules.** Mr. Edwards stated that the Union does not want Company Rules to be a part of the contract and stated that the Union would only agree to the first sentence in the Company's proposal.
3. **Article #4—Union Membership Is Voluntary.** Okay with addition of check off.
4. **Article #5—Hours of Work.** Union has asked for time and a half after 8 hours; time and a half after 40 hours and shift differentials of 10¢ and 15¢ with 8:00 shift getting 10¢.
5. **Article #6—Seniority.** Mr. Edwards stated that the Union had submitted a counterproposal on seniority and further stated that, in their opinion, for employees hired on the same day, seniority should be established based upon the time of day that they were hired rather than on an alphabetical basis.
6. **Article #7—Grievances.** At first Mr. Edwards stated that the Union did not want grievances handled during working hours. When he was reminded that a general agreement had been reached between the Union and the Company on grievance, he agreed that this was true.
7. **Article #8—Arbitration.** Mr. Edwards indicated that the Union was insistent upon their proposal of compulsory arbitration.
8. **Article #9—Insurance.** Mr. Edwards stated that the Union wanted the following improvements to be made in the Company's group insurance plan:
(A) \$20.00 a day for 13 weeks for room and board.

- (B) \$5,000 Life Insurance with A.D.D. (Accidental Death and Disability).
 - (C) \$45.00 per week sickness and accident for 13 weeks.
 - (D) \$450.00 maximum surgical schedule.
 - (E) Employee to pay the same amount as he is presently paying for dependent coverage with the company incurring the additional cost of dependent coverage, including the additional benefits outlined above.
9. **Article #11—No Strike Clause.** The Union prefers to use their proposal.
10. **Article #13—Vacations.** Mr. Edwards proposed the following:
- (A) Vacation schedule
 - 1 week after 1 year
 - 2 weeks after 2 years
 - 3 weeks after 10 years
 - 4 weeks after 15 years.
 - (B) Eligibility requirement reduced to 1500 hours work during the year.
11. **Article #14—Holidays.** In addition to the six (6) holidays that are presently observed, the Union is now asking for the Friday after Thanksgiving, bringing the total number of holidays to seven (7).
12. **Article #15—Break Periods.** Mr. Edwards stated that Union will agree to the present 10 minute break periods but would like to extend our present 5 minute period granted at the end of a shift, for area clean-up and tool replacement purposes, to 10 minutes to also cover wash-up time.

13. **Article #17—Safety.** The Union proposes a safety committee made up of one-half Union and one-half Company.
14. **Article #18—Physical Examinations.** Mr. Edwards stated that the Union wanted the company to drop its requirement for physical examinations where layoffs are less than three (3) months. If an employee has been laid off for a period in excess of 3 months or in connection with an illness, the Union agreed that physical examinations would be in order prior to the employee's return to work. In elaborating on this article, Mr. Edwards stated that the Union did not want to give the Company a blanket right to arbitrarily require physical examinations at their discretion.
15. **Article #19—Job Classifications and Wage Rates.** Edwards said these were in dispute. The Company has offered increases to four (4) classifications (covering some 30 men) from 12 cents to 27 cents per hour. These increases would cover the following classifications:
 - Machinists
 - Pattern Makers
 - Maintenance Men
 - Electric Furnace Operators.The Union wants the whole group moved in the same proportion that these have been moved. They want 22 cents across the board. They want training programs spelled out and progressions spelled out.
16. **Article #22—Reporting Pay.** Mr. Edwards stated that the Union wants 4 hours and that the Company, while originally asking for 2 hours had agreed to split the difference at 3 hours.

17. **Article #25—Duration.** The Union wants a one (1) year contract. The Union will agree on a 60 day notice and will also agree to meet within 30 days after notice. Mr. Edwards indicated that he felt that the rest of our proposal under this article was unnecessary. A lengthy discussion followed in regard to the mechanics of continuing the contract past the expiration date if negotiations were continuing.

Pension Program—The Union agrees to continue our present one and make reference to it in the contract so that it will be a part of the contract.

Mr. Bowden made the comment that in Mr. Edward's review of the contract he had brought out some new proposals and that the Company would like to take a break to consider these proposals. A break commenced at 11:02 and it was agreed to reconvene the meeting at 1:00 P. M.

At the start of the afternoon session, Mr. Bowden said that the Company had considered the Union's proposals and would like to submit the following in the form of concrete proposals by the company.

1. **Article #2—Management Rights.** Add after word "Delivery"—"provided it is not done for the purpose of discrimination against any employee because of his union membership."
2. **Article #3—Company Rules.** Mr. Bowden stated that the Company would agree to delete the rules from the formal agreement if:
 - (a) We have a side letter agreeing that a pre-established set of rules are reasonable.
 - (b) The Union agrees to the Company's proposal on arbitration.

13. **Article #17—Safety.** The Union proposes a safety committee made up of one-half Union and one-half Company.
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 - (a) We have a side letter agreeing that a pre-established set of rules are reasonable.
 - (b) The Union agrees to the Company's proposal on arbitration.

3. **Article #5—Hours of Work.** Overtime will not be paid on a daily basis. Shift differentials be increased from 5 to 7 cents on the 4:00 P. M. shift, 8 to 10 cents on the 8:00 P. M. shift, 10 to 12 cents on the 11:30 P. M. shift.
4. **Article #6—Seniority.** Mr. Bowden stated that the Union's proposal on seniority is too complex for a first contract and that our proposal was a much better way to start until we could all get sufficiently educated to handle a complex situation such as the Union has proposed.
5. **Article #7—Grievance Procedure.** Mr. Bowden indicated that this article had been previously agreed upon.
6. **Article #8—Arbitration.** We propose the Company's article.
7. **Article #9—Insurance.** We stand on our proposal of increasing the daily room rate of from \$9.00 to \$15.00 per day.
8. **Article #11—No Strike Clause.** We prefer to use our proposal.
9. **Article #13—Vacations.** We propose a change in the eligibility to 1650 hours, instead of 1700 hours as previously proposed, but stick to our proposed vacation schedule of 1 week for 1 year, 2 weeks for 5 years and 3 weeks for 10 years.
10. **Article #14—Holidays.** No change in our proposal of 6 paid holidays.
11. **Article #15—Break Periods.** We propose the same 5 minute break period as we now have for the purpose of cleaning up ones work area and putting away tools. We propose no personal wash-up time.

12. **Article #17—Safety.** We will consider their proposal further. Nash came to life here and gave a long dissertation on safety and how he has been personally interested in same over the years. Overman pitched in and again brought up the Fleco crane. Somewhere in the lengthy discussions we brought up the fact that there is an existing safety committee made up of men from the various areas of the plant.
13. **Article #18—Physical Examinations.** Mr. Bowden indicated that we stick to our proposal and that we felt that this was important not only to the Company but also to the employee.
14. **Article #19—Job Classifications and Wage Rates.** Mr. Bowden renewed the proposal which the Company had made at the last meeting covering four (4) specific job classifications. He then stated that on the balance of the employees the Company was proposing an 8 cents across the board increase.
15. **Article #22—Reporting Pay.** Mr. Bowden indicated that the Company would agree to the Union's proposal of four hours.
16. **Article #25—Duration.** We are open on the length of the contract but need other things to lend to an orderly termination. (Here again a lengthy discussion between Mr. Bowden, Edwards and Nash on "notice durations" plus the possibility of making any adjustments in a new contract retroactive to the expiration date followed.)
17. **Check Off.** We propose nothing on this, however, we see no problem if everything else is agreed upon.

The following lengthy discourse was given by Mr. Edwards. He knows our position on arbitration, check off, etc. and he questions whether we can have a good relationship with noncompulsory arbitration and our no strike clause. With respect to our wage offer, Mr. Edwards stated that he appreciated the fact that we had made an offer covering all of the employees but that it was not good enough. He stated further that "since people have lost real income this past year, 8 cents an hour is not responsive to their minimum wage considerations." Mr. Edwards further stated that insurance is a great need that the employees have and that insurance and wages were their two great needs. Mr. Edwards said that he recognized that these things cost money but that they are real needs of the men and not just bargaining techniques. Edwards contends that when they come to the bargaining table they don't bring a computer with them but that they need more money for food, education, better clothes, etc. He said that he believed that we get a good days work from the men and that they should get a good days pay. He further stated that in his opinion Jacksonville wages are too low to permit an adequate standard of living for the men. He mentioned that he supposed that he was wasting his breath but that the men have a stake in our Company and that they are selling a piece of their life every day. He said that he had hoped that we would respond better. He said that the Union was not asking for anything unusual but that we are introducing the unusual, particularly in our arbitration proposal. He stated that they would consider our proposals set forth above and asked for an adjournment. We adjourned at 1:50 P. M. and then reconvened at 3:00 P. M.

The following dissertation was made by Mr. Edwards. "We have had trouble with everything because of arbitration." He then proposed that we drop the complete arbitration clause and the no strike clause and rely only

on the grievance procedure that we had previously agreed upon. Mr. Edwards stated that the Union would agree to go through the grievance procedure before striking.

Mr. Bowden commented that we have adequately covered the arbitration and no strike clauses and that we think that our proposals should be left in the contract. John Overman spoke out at this point and accused Mr. Bowden of not wanting to bargain. Mr. Nash injected that the Union won't sign a contract with our existing language and "where does that leave us?" He stated that he had to report to a general meeting of the membership on Saturday and wanted to know what to tell them. Mr. Bowden told him that he had a contract that he could recommend.

Mr. Edwards said that the Union will consider our proposal on Rules subject to reviewing the specific rules. Mr. Edwards then asked Mr. Bowden about Major Rule #10 dealing with Wage Assignments. Mr. Bowden explained the state laws covering wage assignments and Mr. Edwards then indicated that the Union could not agree to this rule. He stated that the Union agreed that the Company had the absolute right to publish reasonable rules. With respect to the Minor Rules Mr. Edwards made the following comments:

Rule # 1—What are standards—this would have to go through the grievance procedure.

Rule # 5—They don't agree with this. They would have to see the guidelines used in enforcing this rule.

Rule #10—No.

Rule #18—No.

Rule #12—No.

Rule #13—No.

Rule #14—No.

Nash, in a cocky manner, said grievance and arbitration should be adequate for testing rules. Edwards mentioned that all the Major Rules are agreeable except #10 . . . (Wage Assignment). Edwards mentioned that on Minor Rules the normal penalty is three (3) days lay-off—not up to two (2) weeks layoff. Overman commented on Minor Rule #15 by saying that men have to moonlight to earn a decent living. The Union said that we can publish our rules—that we have a reasonable right to do that, however, they would have to look at the application of same.

Additional thoughts were expressed by the Union representatives as follows:

1. Daily overtime—The Union's position is unchanged.
2. Check off—The Union's position is unchanged.
3. Shift premium—The Union proposed 8 cents, 10 cents, and 12 cents.
4. Seniority—They gave us the attached proposal that also proposes that the seniority list be brought up to date and be submitted to the union each January 2nd and June 2nd. They propose a change to our Sub-Title E-5, adding a non-occupational illness of a period of six (6) months or more and also want to add Sub-Title E-6—Lay Offs of more than one (1) year.
5. Arbitration and No Strike Clauses—The Union reiterated their suggestion of dropping both the Arbitration and No Strike Clauses completely, suggesting that both the Company and the Union agree on the complete use of the Grievance Procedure before either a strike or a lock out takes place.
6. Vacations—The Union indicated that it would agree to the 1650 hour a year eligibility require-

ment that the Company had proposed but not to our vacation schedule.

7. Insurance—The Union indicated that they were sticking to their proposal of a \$20.00 daily room rate.
8. Holidays—Union indicated they still wanted the seventh holiday, the day after Thanksgiving.
9. Clean-Up Time—They want us to consider their 10 minute clean-up time proposal. They want us to recognize that it will take more time for few of the men. (McCanless mentioned the welding leads in the innershield machines and said that Luke gave him hell for the mess Fleco was in recently.)
10. Physical Examinations—They cannot agree. They use the example of a man who had worked for the company for years and years and then gets an examination and is terminated for health reasons.
11. Article #12—"Contract Constitutes Entire Agreement of Parties" Mr. Edwards agreed tentatively to our proposal on this article.
12. Vacations—Mr. Edwards then proposed a modification in their position on vacations, changing their 2 week requirement from 2 to 3 years. The Union proposal now stands as follows:

1 week—1 year	3 weeks—10 years
2 weeks—3 years	4 weeks—15 years
13. Wage Proposal—Union reduced its proposal from 22 cents to 20 cents across the board. Mr. Edwards stated, in this connection, that the Union feels that the men need more than this to fill their needs and that they were confident that

“the Company is in robust enough health to agree to this”.

14. Duration—Same as before. They will agree to plenty of bargaining time but no extension unless adjustments are made retroactive.
15. Management Rights—In the absence of a compulsory arbitration clause, Mr. Edwards stated that the Union cannot go along with our Management Rights Clause.

At this point the Company asked for a recess.

Following a brief recess Mr. Edwards made the comment that the Company's position on arbitration, as stated, “frustrates the whole idea of labor relations”.

It was then agreed that the next meeting would be held at 10:00 A. M. on Monday, February 13th and this meeting was then closed.

Seniority

Substitute the following for the present paragraph C of Company proposal: C. Promotions, layoffs, transfers, and the filling of permanent job vacancies shall be made on the basis of seniority provided the affected employee has the ability and physical fitness to perform the required work.

1. New jobs or other job vacancies shall be posted for bid on plant bulletin boards for a period of three (3) work days.
2. During the bidding period the Company may fill the new or vacant job with a qualified employee.
3. In the event an employee is transferred to a job different than his regular job for the convenience of the

Company, he shall be paid at the rate of his regular job or at the rate of the job to which he is transferred, whichever is higher.

4. Layoff of an entire department or individual transfer either of which lasts for not more than five (5) work days may be made without regard to seniority.

RESPONDENT'S EXHIBIT 7

Meeting #7

I. February 13, 1967—Federal Building—10:15 A.M.

II. Attendance:

United Steelworkers of America

Thomas Seniors—Florida Machine & Foundry Co.

Jesse Hunter—Florida Machine & Foundry Co.

Frank McCanless—Fleco Corporation

Harold Mays—Fleco Corporation

James Nash—International Representative—United Steelworkers of America

Federal Mediator—Mr. Kazin

Company

Otto Bowden

Bob Lanquist, Attorney with Hamilton & Bowden
Law Firm

T. M. Madison

T. W. Peacock

W. H. Pearsall

III. General Comments:

Otto started the discussion by asking Nash how the Seniority proposal as submitted at the last meeting affects Sections A & B of our proposal. Nash doesn't know. He remembered a prior discussion on proba-

tionary employment duration being 60 days rather than 90 days. They want 60 days.

On their proposal of Paragraph "C", if the rest of the article is acceptable this dictates a change of language:

1. After word "basis" add phrase "departmental classification" in the preamble.

At this point Nash got off on a discourse of the whole Seniority proposal and finally said that he will consider this.

Otto continued by proposing the following additions to their Seniority proposal:

1. In C-1, add word "department" after word "plant". (The union questioned our breakdown of department and we gave them the following as our departments:)
 - (a) Core Room
 - (b) Molding
 - (c) Metals
 - (d) Cleaning Room
 - (e) Machine Shop
 - (f) Fleco
 - (g) Maintenance Department
 - (h) Pattern Shop.
2. In the event of a temporary job transfer to a job carrying a higher rate, the employee so transferred will get the higher rate prevailing on the job to which he has been transferred only to the extent that this temporary assignment exceeds one full 8 hour day. The first 8 hours that he performs work at this new job on a temporary basis, the employee will earn his regular rate.

Mr. Nash's reaction to Mr. Bowden's suggestion pertaining to temporary transfers for periods of 8 hours or less was negative.

Seemingly, Nash did not understand the proposal and an explanation followed using the example of Jesse Hunter not being there to operate the roto-blast and someone must operate the machine. We also pointed out that it would be impractical for the Company to have many rate changes in a day. Nash asked for a recess to consider the above and prior to leaving, said that he wanted to make one point clear—all these agreements that we have made are tentative pending final and full agreement on a contract. Recessed from 10:45 A.M. to 11:03 A.M.

Nash said that this committee was given the power to do anything to secure a contract. If agreement was reached on all points, they would go back and recommend it. They want to hold to the last thing any comment on the above Seniority proposal. He feels strongly though that there will be other unresolved items.

Otto asked if there was anything else left open from the last session that they wanted to discuss.

Mr. Nash stated that at the general meeting on Saturday, the Company's money proposal was rejected. He went on to describe the manner in which the members reacted to our proposal as follows, "they just laughed". He also stated that at the meeting Saturday our proposal on Physical Examinations was also rejected.

Mr. Bowden asked Mr. Nash what seemed to be questioned on the medical exams. Our position on the exams is the same as before. We think this is very important. (McCanless asked what doctor would

the man go to. One of his own choosing or one of the Company's choosing.) Mr. Bowden said that the man would go to one of the company doctors since the company was defraying the expense. Mr. Bowden said that the man could go to his doctor at his expense and any differences between the two would be resolved between the two doctors.

Mr. Nash wanted the phrase "mutual agreement" added to the physical examination clause. Mr. Nash made these following comments. Said we must have a meeting of the minds. A contract is no good unless there is a meeting of the minds, in other words a mutual agreement. He called attention to Article #2 (Intent and Purpose Clause) and the need for orderly resolving any difference. He questioned our intent on reaching an agreement on a contract.

Mr. Bowden gave Mr. Nash his ideas on the "Intent and Purpose" clause and told him the kind of clause depends upon the kind of arbitration clause agreed upon and mentioned his lack of confidence in arbitrators. A lengthy discourse on the "Intent and Purpose" clause (Harmony Clause in general) and their relationship to arbitration, etc., followed. Mr. Nash brought up the question of noncompulsory arbitration and the fact that they want it. Mr. Bowden countered back with "we strongly maintain our position on a noncompulsory arbitration clause."

Mr. Nash then stated that the alternative to compulsory arbitration is war. He asked, "do you want us to pick up guns and axes and go after each other?" Mr. Nash then accused the Company of wanting war rather than an organized approach to settling our differences. Mr. Nash then stated that a noncompulsory arbitration clause will not be approved by their International Union in Pittsburgh.

During the course of this discussion, Mr. Nash used the phrase "going to war" several times.

Mr. Nash accused us of not wanting a contract—of wanting war and of not wanting industrial peace. He proposed in order to eliminate harassment that the loser in arbitration pick up the tab for same. Mr. Nash accused the Company of trying to establish a trend and that he is going to prevent that. Mr. Bowden and Mr. Nash got off on a tangent of

Mr. Nash then asked for our specific position on various matters and Mr. Bowden answered as follows:

1. Overtime—Our position is the same.
2. Compulsory Arbitration—Our position is the same.
3. Check Off—We have no position now. Our answer to this is the same as their answer on Seniority.
4. Union's No Strike, No Lock Out Proposal—We insist on ours since it is more broad.
5. Seniority—No change in our position.
6. Shift Differential—Our position is the same, an increase of 2 cents on each shift premium.
7. Union's Termination Clause—We are not firm on our proposal.
8. Holidays—Our position is the same.
9. Insurance—Mr. Bowden indicated that our position was the same and Mr. Nash stated that the Union wanted the company to pick up the cost on dependents hospitalization coverage and also to increase the daily room rate for both dependents and employees to the equivalent of a semi-private room rate. Mr. Nash volunteered the guess that the cost of this request to the company would amount to above 3 cents an hour but he asked us to go out

and price his proposal so that the price of the package could be determined. Mr. Bowden countered that it was his proposal and therefore the burden of determining the cost was on the Union. After a somewhat heated discussion Mr. Bowden reiterated that our position on insurance was the same.

10. Intent and Purpose Clause—Our position here depends upon the arbitration clause agreed upon.
11. The Union's Management Clause—We reiterated our position on the management rights clause and Mr. Nash indicated that the Union rejected our Clause and would insist on their own clause.
12. Safety—They reinstate theirs. Mr. Bowden asked them for their proposal in writing.
13. Wage Rates—They want those in Apprenticeship progressions to be raised in the classifications the same ratio as the top man, in addition to the across the board increase. We stand firm on our wage proposals. Mr. Nash then indicated that the Union wanted to assist the Company in analyzing its job classifications in order to eliminate inequities. They want jobs grouped to eliminate so-called merit raises and hourly rate differentials between similar jobs for no apparent reasons.
14. Vacations—Our position remains the same.
15. Successor Clause—We say no need for this clause since the company has been under the same ownership since 1898. Therefore the answer is "no".
16. Wash-Up Time—We reiterated our position that we were not prepared to offer additional free time purely for the purpose of washing up on company time.

Mr. Bowden then asked Mr. Nash for the Union's position on the following items:

1. Article #3—Company Rules—Mr. Nash stated that the Union would not agree to including company rules as part of the contract. He did indicate, however, that they would agree to the article with the deletion of the sentence "current rules are attached hereto, marked Addendum B and made a part of this agreement and accepted as reasonable by the Union" and that they would agree to give us a side letter stipulating certain rules and agreeing that they are reasonable.
2. Company's No Strike Clause—Mr. Nash says this opens the discussion on arbitration, intent and purpose, etc.
3. Physical Examinations—Their position is the same.
4. Article #20—Work by Supervisors—They agree with this.
5. Article #12—The Union reversed themselves here stating that they had changed their position from agreement to "no".
6. Article #20—Work by Supervisors—The Union still agrees to our Article 20.
7. Going back to the specific rules, the Union indicated that their position was the same. They indicated they would be willing to accept all of the major rules except Rule #10. In connection with the minor rules they wanted to change the general wording to read "the employee may be suspended from work without pay for up to and including 3 days" rather than 2 weeks as indicated in our proposal. With regard to the specific minor rules they agree to our Nos. 2, 4, 6, 7, 8, 9, 11, 17, 19

and 20 while refusing to accept our Nos. 1, 3, 5, 10, 12, 13, 14, 15, 16 and 18.

General Comments:

Mr. Nash stated "this contract has a very short future if the Company's position doesn't change". He stated that the contract will die in the embryo stage. When the 8 cent offer was mentioned, the men at the meeting laughed a sickening laugh. Nash says all employees in the South with the exception of Southern branches of Northern companies are being discriminated against. He said they are underpaid. Mr. Bowden said that the Union must be trying to set an example and blaze a new trail in the South, in fact it appeared that they were attempting to change the entire wage structure in the south. To this remark Mr. McCanless said "we've got to start somewhere" and then he went on to express the general opinion that Florida Machine & Foundry and Fleco Corporation represent a good place to start a crusade in the south.

Mr. Nash said that if we have reached the point where positions won't be changed then something else will have to be done. Then with great stress on the fact that he was trying to ask a serious question, Mr. Nash asked if the Company was desirous of having a reasonable contract for the benefit of everyone involved—officers, stockholders, supervisors, employees and the Union. Mr. Bowden responded that the answer to this question was yes and that our proposed contract does exactly that and the least the Union could do would be give it a whirl.

Mr. Nash then stated that in view of the Company's position on many things other than the money items that he felt that the company is desirous of having a strike in order to break the Union.

Mr. McCanless made a comment that on the money items Mr. Bowden must not have bought any groceries or clothing lately and that the Company's proposed wage adjustment was insufficient and furthermore the last two raises which the company had given to the men were insufficient. Mr. Mays made the comment that quite a few men have left because of low wage rates.

Mr. Bowden mentioned that our position on the economic items is based on the local labor market and that the Company does not have a problem with labor turnover and that consequently we must be paying a competitive wage in this area.

Mr. Nash claimed that the turnover in this area of Florida is among the highest in the country. He then quoted a local Chamber of Commerce source as having told him that the Jacksonville area had a high labor turnover due to the low wage rates paid in this area. Mr. Nash cited as a specific example of this the service industries such as the hotels, etc. Mr. Bowden challenged this statement and asked to have the Chamber of Commerce representative identified so that he could get more facts on the situation. Mr. Bowden made a statement to Mr. Nash that he agreed with some things that Mr. Nash had said and Mr. Nash replied to Mr. Bowden "if you would agree with anyone I would be astounded".

Mr. Nash then made the following statement, "when and for what purpose do we next meet?"

Mr. Bowden suggested that we leave it to Mr. Kazin to determine when it might be appropriate to have another meeting, suggesting further that perhaps Mr. Kazin would want to wait until one party or the other indicated a desire to make some change in posi-

tion before calling the next meeting. Mr. Nash then said he might not be able to contain the men and prevent a strike and in such an event he asked, "What would be the company's position if the Union decided to strike?"

Mr. Bowden replied that the Company would not be stampeded into making an unwise decision under pressure but that he didn't want to deal with a hypothetical case.

Mr. Nash then stated that he was not anxious to have a strike at that time, primarily because he felt that that was just what the company wanted. He indicated that he would rather take his own timing for a strike.

Mr. Nash then mentioned that in the event of a strike the Union would like to have an orderly exit since the men would hope to ultimately return to their jobs. Mr. Nash indicated that frequently the Union and the Company would work together for an orderly plant shutdown. At this point, Harold Mays said that he wanted to ask a question and he wanted to direct this question to Mr. Pearsall. Mr. Bowden reminded him that he was spokesman for the group and that all questions would go through him. Harold agreed. He asked if the company didn't pay a hell of a tax on profit and we don't pay taxes on wages and it is his impression that 8 cents doesn't cost the company but 6 cents, so why can't they give more to the men. Mr. Nash chimed in at this point and said with all the taxes, corporate taxes, income taxes on dividends, etc., that the company might as well give the money to the men. At this point he pointed to Thomas Peacock and said that he was sure he had stock in the company and that he should want to give the money to the men. Mr.

Nash said he wanted to persuade the company representatives to loosen up on the money. He commented that the company representatives should want to increase the coverage of the insurance because, after all, they too would participate in any increased benefits. At this point McCanless said he wanted to question about rates going up and mentioned that he had Blue Cross insurance and that they increased the benefits without an increase in premium.

Mr. Bowden asked him when he had his last premium increase and McCanless said "last year". Mr. Bowden asked him if he had any increase in benefits at that time. McCanless said "no". McCanless said that he carried this Blue Cross coverage because the company's coverage isn't sufficient. He admitted that he had never had an occasion to use the company's coverage.

Nash said that he still doesn't know when and for what on the next meeting. Mr. Kazin asked Mr. Nash if he wanted to set a meeting. Mr. Bowden mentioned that the Company will hold itself open to a call for a meeting. Mr. Nash asked Mr. Bowden to look at his schedule and set a time. He said the Union would require another meeting since he has something to do prior to the meeting. Mr. Kazin asked Mr. Nash again if he wanted to set a date. Mr. Nash said he would like to set a date. Mr. Nash said he would like to set a date. Mr. Bowden said it would be sometime next week and that he would contact Mr. Kazin upon his return to his office.

Meeting adjourned at 12:42 P.M.

RESPONDENT'S EXHIBIT 8

Meeting #8

I. February 22, 1967—10:17 A. M.—Federal Building

II. Attendance:

United Steelworkers of America

Frank McCanless—Fleco Corporation

Harold Mays—Fleco Corporation

Thomas Seniors—Florida Machine & Foundry Co.

Jesse Hunter—Florida Machine & Foundry Co.

W. T. Edwards—International Representative—

United Steelworkers of America

James Nash—International Representative—

United Steelworkers of America

Federal Mediator—Mr. Kazin

Company

Otto Bowden, Attorney

Thomas M. Madison

Thomas W. Peacock

Willard H. Pearsall

III. General Comments:

The meeting began by Mr. Bowden asking Mr. Edwards if the Union had any new thoughts that they wanted to convey to the company. Mr. Edwards answered Mr. Bowden by saying that the Union's position at the moment could be summarized by four economic requirements and four non-economic requirements. Mr. Edwards went on to say that he would itemize these various requirements and that as far as the Union was concerned these were the only open matters and if they could be resolved a contract could be agreed upon. He went on to describe them as follows:

A. Economic Matters

1. Holidays—The Union still wants the day after Thanksgiving.
2. Overtime—The Union wants time and a half after 8 hours.
3. Wages—The Union wants 20 cents/hour across the board.
4. Insurance—The Union wants the company to pay the full cost of the present insurance program (in other words the Union wants the company to pick up the cost of dependent coverage).

B. Non-Economic Matters

1. Compulsory Arbitration—The Union urges the Company to accept their traditional arbitration clause.
2. No Strike, No Lock Out Clause—The Union wants the Company to accept theirs as a typical clause.
3. Seniority—Agree with our Seniority Clause with the addition of their supplement (Article C).
4. Management Rights—They will agree to the Management Rights Clause with the changes that Mr. Bowden has proposed.
5. Physical Examinations—The Union proposes that the language in the Company's proposal be modified to permit physical examinations, other than pre-hiring physical examinations, only after illness and layoffs.
6. Company Rules—The Union does not want them as part of the agreement. They want them to be published separately and they take the position that the Company can set down

any list of rules that they desire and that the Union will look at the application of each rule through the grievance procedure.

7. Intent and Purpose Clause—They strongly urge the Company to make this a part of the agreement.

It is to be noted here that although Mr. Edwards mentioned four non-economic requirements he actually listed seven.

Mr. Bowden then asked Mr. Edwards if there was anything else, in addition to the items listed above, that the Company would have to be concerned with. Mr. Edwards replied that the only other area concerned the moving of a man from one job classification to another job classification on a temporary basis. He stated that the Union would insist on the man being paid at the higher rate if the new temporary job he was filling carried a higher rate. Mr. Edwards made the statement that the Union considers a contract a sale of work and it sets forth the terms and conditions of same. He then reiterated that the items mentioned above were the only outstanding points in their opinion and that all other points have been agreed upon.

Mr. Bowden asked again if these are the only points holding up a contract and that he didn't want to resolve these points and then have a whole new series of issues raised by the Union.

Mr. Edwards replied that this was it and that they weren't anymore points to be raised. He then stated that if we failed to reach an accord on the above points that the Union considers that they haven't reached an agreement on anything.

Mr. Bowden agreed that everything up to that time had only been agreed upon tentatively.

It was then 10:30 A. M. and the Company asked for a break to consider the various proposals which the Union had made.

The meeting was reconvened at 11:50 A. M. and Mr. Bowden made the following observations on the above mentioned points.

A. Economic Proposals.

The Company has made all the movements in this area that they feel are justified. Mr. Bowden mentioned that their daily overtime proposal would only compound our already serious problem of absenteeism. He pointed out the fact that 51% of our employees lost time in the month of January.

B. Non-Economic Proposals.

1. Compulsory Arbitration—We stand on our non compulsory arbitration proposal.
2. Union's No Strike Clause—The Company feels their proposal is not broad enough to cover current court decisions in the event of a breach of contract.
3. Seniority (by departments)—The Union proposal of February 7, 1967, covers only "C" of the Company proposal and we assume all other sections of Company proposal are agreeable. On their proposed Section "C", we will agree on the preamble with the addition of the words "department classification" after the word "basis". In Item #13, Section "C", after phrase "regular job" add words "is more than one shift". In addition, list the 8 departments mentioned at one of the prior meetings.

4. Management Rights Clause—The Company will agree to add after phrase “and delivery” the following, “provided it is not done for the purpose of discrimination against any employee because of his Union membership”.
5. Physical Examinations—Their proposal is not broad enough and doesn’t reach all the circumstances.
6. Company Rules—If the Union will agree to the Company’s Article #3 the Company would delete that part about rules being attached if the Union gives the Company a side letter stating that the proposed rules are reasonable.
7. Intent and Purpose Clause—If the Union will agree to the Company proposal on Arbitration, the Company will agree to their Intent and Purpose Clause.

Mr. Bowden then reviewed the Company Rules, making suggestions as follows:

A. Major Rules

1. Rule #10—Change to read “wage assignments if not settled before any liability is attached to the company”.
2. Rule #13—to read “conviction of a felony”. This is a new rule in addition to the 12 originally submitted with our proposal.

B. Minor Rules

1. We propose a change in our original proposal as follows, “for the second violation of any of these rules, the employee may be suspended from work without pay for up to and including one (1) week”. This has the effect of substituting one (1) week for two (2) weeks as

the suspension period in the event of a second violation.

2. Rule #5—The word “profane” will be deleted from this rule as originally proposed.
3. Rule #18—This rule will be deleted entirely.

Observations and comments while Mr. Bowden was presenting the above.

1. When the company representatives returned from the recess Mr. Edwards indicated that he had forgotten to mention before the recess that in addition to everything else he had proposed, the Union would still require a check-off.
2. When we made no more movement on economic proposals, Harold Mays folded up his papers, stacked them in front of him and commenced ponting.
3. Mr. Edwards suggested recessing until some future date and Mr. Kazin suggested leaving open the meeting time and date subject to call from either party or the Federal Mediator. All parties agreed to this.

Before leaving Mr. Edwards accused Mr. Bowden of starting an investigation of Mr. Edwards, Mr. Nash and Mr. McCall. He said that the police had been investigating him locally and also in Tampa and he doesn't know why we started such an investigation. Mr. Bowden denied originating any investigation but did indicate that the police had called him indicating that it was their understanding that he was handling negotiations for Florida Machine & Foundry Co. with the Steelworkers and requesting the addresses of the various union representatives. Mr. Bowden told Mr. Edwards that he did not give the police any addresses.

RESPONDENT'S EXHIBIT 9

Meeting #9

I. March 14, 1967—Federal Building—10:00 A. M.

II. Attendance:

United Steelworkers of America

W. T. Edwards—International Representative

James Nash—International Representative

Thomas Seniors—Florida Machine & Foundry Co.

Frank McCanless—Fleco Corporation

Harold Mays—Fleco Corporation

John Overman

Federal Mediator—Mr. Kazin

Company

Otto Bowden, Attorney

W. H. Pearsal

III. As the meeting opened Mr. Nash passed around a letter to the company with reference to non-striking employees carrying firearms into our plant. A copy of this letter is attached.

Mr. Edwards opened the meeting with a series of random remarks, observations, and questions as follows:

1. He stated that in contrast with Mr. Bowden's recent letter, the Union and the Company are not in agreement on Seniority.
2. He wanted to know why the Credit Union was dragging its feet on disbursements to strikers?
3. He wanted to know why the Company was withholding paychecks from strikers?

4. He reviewed the non-economic issues on which he felt the Union and Companies were still in disagreement as follows:
 - A.) Holidays—He reiterated that the Union wanted one more paid holiday.
 - B.) Insurance—He reiterated the Union's opinion that the present plan was inadequate.
 - C.) Arbitration—He reiterated that the Company's proposal was unsatisfactory.
 - D.) Seniority—He reiterated that the Company's proposal was inadequate.
 - E.) Physical Examinations—He stated that "a man can be denied employment at the whim of a doctor".
 - F.) Company Rules—He agreed that the Company has the right to write reasonable rules but the Union will not bargain with the Company about these rules or put them in the contract.
 - G.) Intent and Purpose Clause—Mr. Edwards stated that he wanted it in the contract because "it makes the agreement more of a human document".

When he was finished Mr. Bowden explained that it was his understanding that the Credit Union was an organization operated by company employees and not by the Company. He stated that he would be glad to have a break to get a clarification on this but he was confident that the Company was not involved in its affairs.

Mr. Pearsall then explained that to the best of his knowledge only two paychecks had been temporarily withheld from strikers and that this was due to the fact that these employees owed the Company some money and that the

checks were withheld for a short period of time until certain details pertaining to this could be worked out. It was explained by Mr. Pearsall that one of these cases involved a loan to an employee in connection with a hospital bill and that the other involved a case where an employee had been overpaid and a monthly deduction had been agreed upon by the Company and employee to effect an appropriate reimbursement. At this point Mr. McCanless injected as follows, "nobody out there has been overpaid. Everyone has been underpaid".

Mr. Bowden told Mr. Edwards that he couldn't understand why the Union was so insistent on including the Intent and Purpose Clause if it was as unimportant as Mr. Edwards has continuously maintained.

Mr. Edwards then stated that the attitude of the Company is anti-labor and said, "that's why we are confronted with the present strike". Mr. Edwards indicated further that it was his opinion that the Company's committee had made the Union strike our Plant. He said the Union doesn't believe the Company came to the table originally to get an agreement. Mr. Bowden explained to the Union representatives that the Company was being swamped with applicants for the job openings that had developed as a result of the strike. He indicated that the Company had received a fantastic number of telephone calls in response to its first ad and that the problem was not one of hiring personnel but one of assimilating them into the plant. He observed that the response which the Company was receiving from people who were not working at the present time and also people who were working for other companies in the Jacksonville area and wanted to be considered for a job with Florida Machine & Foundry Co. or Fleco Corporation because the rates of pay and overall program were better than they had on their present jobs tended to confirm the position which

the Company had taken throughout the negotiations that its wage levels and fringe benefits were not only in line but in many cases superior to the general level of wages and benefits in the Jacksonville area.

Mr. Nash commented that, "all but a few people in Jacksonville, Florida are underpaid".

Mr. Overman raised the question as to the ability and efficiency of the new workers that were being hired. Mr. Bowden replied that the workers that were being hired were, in the Company's opinion, just as good as the workers they had before and indicated to Mr. Overman that this would give him some idea as to the quality of the workers that were being hired.

Mr. Overman said that their people on the outside know more about what's going on in the plant than Mr. Bowden did. Mr. Bowden apologized for not being a welder and agreed that he was not too familiar with the operations of the plant but stated that the Company was well satisfied with the performance of their new employees.

Mr. Edwards stated that our Companies should pay 1½ times for daily overtime. He said that the Union thinks that this is reasonable for a company of our size.

Mr. Bowden responded that the Company had surveyed the economic items and that the Company feels that they have made all the overtures that are appropriate.

Mr. Edwards then stated that, "since nobody has changed their position we'll just have to see how long it will take the Company to scab up and that's all there is to it".

Mr. Edwards then remarked further that, "we're not going to leave Jacksonville for years and years and we'll be back at your door at every opportunity".

Mr. Nash suddenly became very excited at something Mr. Bowden said and began to rant and rave in a highly

emotional and irrational manner. Mr. Kazin then intervened and suggested that both the Union representatives and the Company representatives take a break for a cup of coffee.

Mr. Edwards injected one parting shot, remarking that, "in settling the strike we want the elected president of the local Union, John Overman, back at work".

At the conclusion of the break it was agreed that no useful purpose could be served by resuming the meeting at that time and it was decided to adjourn the meeting at 11:15 A. M.

RESPONDENTS' EXHIBIT 10

Meeting #10

I. Federal Building—May 1, 1967—10:00 A. M.

II. Attendance:

United Steelworkers of America

James Nash—International Representative

W. T. Edwards—International Representative

Frank McCanless

John Overman

Thomas Seniors

Jesse Hunter

Company

Otto Bowden

Thomas M. Madison

III. General Comments:

Federal Mediator Kazin opened the meeting by thanking both parties for copies of the correspondence and remarked that he did not see any significant change

in position as a result of the correspondence and that he would just turn the meeting over to the parties involved.

Mr. Edwards asked if the Company had taken time to reconsider Arbitration and Mr. Bowden, in a lengthy answer, replied that we had and our position is the same. Mr. Bowden said that he had recapped the points that the Union and the Company have agreed on to date and submitted them to the Union. Sight attached.

A. Seniority (Article VI of Company's Proposal)

Mr. Edwards lead off a general discussion on the topic of Seniority. He took the position that the Company had agreed to a 60 day probationary period rather than the 90 day probationary period as is shown in Article VI (B), Page 4 of the Company's proposal. Mr. Bowden checked his notes and said that as far as his records show that this point is still open for discussion and agreement. Mr. Edwards then turned the discussion to the Union's "Seniority" proposal which was submitted on February 7, 1967 and wanted to review our objections. Mr. Bowden checked his notes and answered the above. A discussion followed between Mr. Bowden and Mr. Edwards on the above which is "the union's proposed changes to our Seniority Clause (Article VI, Section (C)). Both Mr. Edwards and Mr. Bowden expounded on Section (3) of the above and it was brought out that neither party has changed their position. In regard to Article VI, Section E, (3) of the Company's proposal, Mr. Edwards thinks that this is not reasonable. Mr. Bowden pointed out Article X of the Company's proposal (Page 7) and mentioned that the Union had agreed to this on December 19, 1966.

After a lengthy discussion both parties agreed to add to Article VI (E), Page 4 of the Company proposal the phrase "without observing the requirements of Article X." The Union proposed that on Article VI (E-5) of the Company's proposal be changed to six (6) months from 3 months and add word "non-occupational" before the word "illness". Mr. Bowden said the Company would take this under consideration. Mr. Edwards questioned Section VI-(F) of the Company's proposal and Mr. Bowden reminded him that we had agreed to the Union's Article 11.6.

B. Grievance Procedure (Article VII, as amended, of the Company's proposal)

Mr. Edwards made a lengthy comment on this topic saying, among other things, that they could not function as a Union—trying to insure industrial peace and tranquility—without compulsory arbitration.

Mr. Bowden and Mr. Edwards discussed this topic in quite some detail, both expounding on their ideas of compulsory and non-compulsory arbitration and as an end result it was brought out that neither party had changed its position.

C. No Strike Clause (Article XI, Page 8, Company Proposal)

After discussing the pros and cons, Mr. Edwards asked if we had any change in our position. Mr. Bowden explained our reasoning behind this article and that we thought that it was very important in an agreement. Mr. Edwards said that they, as an international union, cannot promise "no wildcat strikes" and that they were hung up on the word "permit" in our Article XI-(A). After

both parties expounded on the subject Mr. Bowden made the comment that soliciting the help of the Courts should serve the Union as an aid in helping them prevent these strikes. There was no change in either position.

D. Check Off (Union Proposal Article 4)

Mr. Edwards asked our position on this article and Mr. Bowden said that it is the same.

E. Striking Employees

Mr. Edwards said that prior to signing any agreement that they would require the Company to take back all of the employees who are on strike. Also, John Overman would have to be put back to work.

F. Intent & Purpose Clause (Article 2—Union Proposal)

After a lengthy discussion it was brought out that the positions of both parties remained the same. Mr. Bowden said that the Company's position depends upon the type of Arbitration Clause.

G. Medical Examinations (Article XVIII, Company's proposal)

Mr. Edwards expounded on his theory in regard to this article. John Overman and Frank McCannless took off on a tangent degrading Dr. Archie Baker. The Union said they will agree to this article if the company agrees to pay the doctor of the employee's choice. Mr. Bowden asked them to submit a written proposal so that he could check the wording.

H. Company Rules (Addendum B—Company's proposal)

Position of both parties remain the same.

I. Economic Issues

Mr. Edwards doesn't think the 8 cents across the board is enough and he questioned our theory behind the other selective proposed increases.

Summary:

Mr. Edwards said that the Union has been frustrated on the following points:

1. Economic Issues

Mr. Edwards feels that the Union could not agree to our 8 cents across the board with the four (4) selective increases since it would be discriminating against the employees that they represent. Later on in this same discussion, Mr. Edwards said that the Union would change their request from 20 cents to 18 cents across the board for everyone with 20 cents across the board for the four (4) selective classifications.

He feels that they should have one more paid holiday and that the company should pick up the dependent coverage premium on insurance.

2. Non-Economic Issues

Mr. Edwards feels very strongly about the Arbitration, Check Off, No Strike—No Lock Out Clauses.

In regard to the No Strike—No Lock Out Clause, Mr. Nash got off on a tangent of its being impossible and illegal for the Union to live up to Article XI (A) of the Company's proposal. Mr. Nash said that this in itself shows that the company has not been bargaining in good faith. At this point, John Overman got off on a tirade of the inferior conditions, low

wages, inferior insurance program, etc., claiming such things as the men were poorly underpaid. Mr. Edwards said that it doesn't look like we have made much progress here today and that it doesn't cost the Union much money to have a strike and that they can just continue indefinitely . . . they didn't want this strike to begin with. He claimed that they will be back again next year. Frank McCanless said they will probably have the scabs organized within the next year or so.

Mr. Kazin requested a conference with the Company's representatives and following same he adjourned the meeting and said that another meeting could be called upon the initiative of either party.

RESPONDENTS' EXHIBIT 11

Meeting #11

I. New Federal Building—August 7, 1967—10:00 A. M.

II. Attendance:

United Steelworkers of America

James Nash—International Representative

W. T. Edwards—International Representative

Frank McCanless

Thomas Seniors

Jesse Hunter

Company

Otto Bowden

Thomas W. Peacock

Willard H. Pearsall

III. General Comments:

Federal Mediator Kazin opened the meeting by remarking that it had been some time since we had all been together and that he would throw the meeting open for general discussion.

Mr. Edwards then started things off with the statement that the Board had found that the Company had bargained illegally.

Mr. Bowden interjected with a denial that the Board had in fact made such a determination and that the Company categorically denied that it had in any way bargained illegally and that its position would be defended vigorously.

Mr. Edwards then said, "let's talk about the employees that have not been reinstated. We want you to put these men back to work".

Mr. Bowden then commented that the Company will hire men from the lists that were presented to the Company in connection with the respective N.L.R.B. charges on a selective basis just as they would hire any other applicant who showed up with an offer to go to work. Mr. Edwards then remarked that, "in the great amount of time that has transpired, the Company had yet to initiate a meeting with the Union and that the Union has always pressed for meetings". Mr. Edwards stated that a consideration of good faith bargaining is the Company wanting meetings as well as the Union.

Mr. Bowden then asked Mr. Edwards that since he had asked for this meeting did he have anything new to offer?

Mr. Edwards stated that the Union was always willing to modify its terms and further stated that it was the Company who had been rigid in its position.

Mr. Bowden then asked Mr. Edwards to please indicate specifically what new proposals he wished to make.

Mr. Edwards then stated as follows:

1. The Union will drop its request for an "Intent and Purpose Clause" if the Company will accept the Union's "Arbitration Clause".
2. The Union will agree to include Rules in the contract but will ask that the penalties for infractions of the rules be reduced in severity.
3. With respect to physical examinations, the Union wants a medical arbitration clause.

At this point Mr. Nash injected himself viciously into the conversation asking Mr. Bowden, "Are we boring you Mr. Bowden"? Mr. Nash then made another surly, inflammatory remark about Mr. Bowden's arrogance.

Mr. Bowden then suggested to Mr. Nash that he let Mr. Edwards proceed.

Mr. Edwards then backed up Mr. Nash by saying, "Mr. Bowden, your attitude is most surly. I'm not going ahead with any new proposals".

Mr. Bowden then stated, "Mr. Edwards if you have any new proposals please put them out."

Mr. Edwards then said to Mr. Bowden, "we didn't hire you to give us advice Mr. Bowden".

After some further disparaging remarks about the way Mr. Bowden was handling himself and his presumed attitude Mr. Edwards settled down and went on with his proposals as follows:

1. Insurance—the Union will agree to reduce the amount of life insurance coverage from \$5,000

to the present limits but will insist upon the Company picking up the entire cost of the program both for the individual employee and his dependents.

2. The Union will agree to the Company's offer with respect to wage rates for various top skills.
3. The Union will agree to reduce its demands for all other wage rates from 20 cents an hour to 18 cents an hour. (It was later brought to Mr. Edwards attention that the 18 cents an hour proposal had been made previously at the May 1st, 1967 meeting.)
4. Daily overtime—the Union still wanted that.
5. Seniority—the Union would insist upon departmental seniority.
6. The Union will drop its request for a 7th holiday.

With further reference to the Rules Mr. Edwards expressed his belief that 3 days should be substituted for 2 weeks in the Company's proposal and that instead of the wording "shall" be discharged, the word "may" should be substituted. The effect of this he explained would make discharge not an automatic procedure. He further stated that Rules should be impartially implied and not used for the purpose of discrimination. With respect to a specific rule, he indicated that the Union would agree to Major Rule #10 "Wage Assignment" although he expressed his opinion that this was a very unfair rule and that penalizing an employee for this reason only compounded the employee's financial problems. Mr. Edwards then said, "keep in mind that we want you to take all these people back to work."

At this point an intermission was taken so that the Company could review the Union's new proposals. At the end of the intermission Mr. Bowden gave the Company's response as follows:

1. The Company will agree to the "Intent and Purpose Clause" if the Union will agree to the Company's "Arbitration Clause".
2. With respect to the rules the Company will agree to include the rules in the contract and will substitute three days for two weeks as the penalty for a second violation but would insist upon a mandatory dismissal as the penalty for a third violation. The Company would be willing to include language to the effect that these rules would "not be used for purposes of discrimination."
3. With respect to physical examinations, the Company would allow an employee to go to a doctor of his own choosing at his own expense. If a difference of opinion developed between his doctor and the Company doctor then these two doctors would select a third doctor to decide the issue and the employee and the Company would split the expense of the third doctor.
4. With respect to insurance, the Company would have to stand by its latest proposal which had increased the daily room rate to \$15.00 a day.
5. With respect to wages, the Company was not prepared to improve upon its last offer.
6. With respect to daily overtime, the Company could not agree to it.
7. With respect to Seniority, the Company believed that the most realistic approach to the

problem in its plants would be classification within departments and that it must stick to this proposal.

8. The Company agreed to accept the Union proposal of 6 holidays and that this should close one area of disagreement..
9. With respect to a "No Strike Clause," the Company must stick basically to its proposal but would be willing to substitute the word "authorize" for the word "permit". Furthermore, the Company would be willing to add language to the effect that with respect to this clause no action would be taken by the Company for the purposes of discrimination.

Mr. Bowden stated that this was the end of the Company proposal.

Mr. Nash then injected, "what about our request to reinstate employees?"

Mr. Bowden responded that the Company had no need for them now but that they would be employed on a selective basis when and as they were needed. Mr. Edwards remarked, we cut our position down; we dropped a holiday, etc. We came to the table to reduce our proposal quite a bit hoping that you would respond. Mr. Edwards then went on to add "it is just such bargaining sessions as this that are breeding disrespect for our labor laws. The remedies that the Board has are innocuous thus encouraging companies to persist in unfair bargaining. The working man is frustrated. Mr. Bowden, you create tension in the community with your tactics. You are threatening the institutions of this country." Mr. Edwards then went on to say that "the working man is as much an American as Mr. Ball or you

Mr. Bowden, but in my opinion the working man's current frustrations are only temporary."

Mr. Bowden then told Mr. Edward "if you don't get everything you want you think that's unfair bargaining." Mr. Edwards then remarked, "the striking process will be passe one of these days and this condition has been brought on by bargaining in the South."

Mr. Kazin then broke in and said, "we'll recess until someone comes up with a new thought."

Mr. McCanless then contributed a parting shot. "Tell Mr. Russell that everyone is still eating regularly and no one has lost his home yet," whereupon Mr. Nash injected sarcastically something to the effect that he knew Mr. Russell would be very much interested since he had been so interested in everything all along.

RESPONDENT'S EXHIBIT 12

Personal Interviews

I. Present Benefits

1. Pension
2. Paid Vacations—
3. Paid Holidays—6
4. Hospitalization—
5. Group Life Ins.

II. Job Security

1. Layoff policy—
2. Aggressive company
3. Union goes for check off and union wants trial for not paying dues.

III. Wages

1. Compare with other companies in area.
2. Our wage increases in last few years.

2/14/66—7¢

3/1 /65—3% or 4¢ to 8¢

IV. Job Opportunity

1. Ability, aptitude, attitude & length of Svc.
 2. (Illegible)
-

RESPONDENT'S EXHIBIT 13.

Talk to Employees

September 21, 1966

2:30—Wednesday

10:15—Wed. Night

You men are about to vote in a Union election. You can vote for either one of two Unions or the Company—this is a very important decision for you to make.

We have not fooled you. When you started work for us you knew our policy was "open shop", and no one was required to join a Union and pay union dues in order to work for us. We have all done well without any interference from a Union, and your management intends to keep it that way, and I hope that each and every one of you feels the way that I do and will vote for the Company so that we will continue to have success and job security with a good wage.

We know what a Union can do to a plant—we had one for 15 years. As I understand that many of you have never belonged to a Union, I think it only fair that I recite some facts that took place here some seven or

eight years ago. Due to economic conditions, at that time, we did not think it was good business to give the wage increase demanded, but told them we hoped conditions would improve enough before the end of that year to grant a wage increase. The Union called a strike. We announced to the strikers that they could return to their jobs if they had not been replaced. Quite a few returned. About 140 men, who did not return, were replaced and many of the men who took their places are still working for us. One of the sad things about this, is that, to our knowledge, not one of the men, who did not return, bettered himself or even got a job as good as the one he left. Many applied for their old jobs after it was too late. In a short time, thanks to the many new men and the loyalty of the old ones who stuck by us, everyone was happy again without any outside influence to interfere so that we could devote our entire time to the best interests of you men and our Companies—we did not lose a customer. The wage increase just mentioned was granted as we told them it would be.

I have heard rumors, and no doubt many of you have too, that our Companies are making tremendous profits. I've even heard the figure of \$1,000,000. All I can say is, this is utterly ridiculous. You fellows all know that a company cannot make an unreasonable profit for any length of time. To do this your prices have got to be too high and competition will come in and cut your throat.

What are profits anyway? These buildings are profits. All this equipment is profits. In fact, speaking of \$1,000,000, you fellows might be surprised to know that we have to keep approximately \$1,000,000 tied up in inventory at all times. Such things: as scrap, alloys, bentonite, sand, finished and partially finished castings, finished rakes, angle, plate, pipe. All of these things are also job security.

No Union can give you job security. Only a well managed and successful Company like our Foundry and Fleco can give you job security.

In your talks with Tommy Madison and Tom Peacock, I hope they have made it clear to you that the "Golden Rule" is the one basic policy of our Companies. I am very proud of the calibre of the men who are managing our Companies. I am also proud of you men, who, by your loyalty and good work have made it possible for us to have gained an outstanding position in our Industry. We are looked up to throughout the entire World for the quality of our products and the type of our men whom our customers come in contact with.

From 1959 to now, without interference or confusion caused by Unions, during which time we all have been able to act as free men, your Companies have made more progress and you men have received more pay increases and fringe benefits than ever in the histories of our Companies.

Well men, in closing, the law says I can't threaten or promise you a thing. Well, I am going to make you one promise anyway. I promise you our Companies are going to be just as aggressive in obtaining work for you men in the future as we have in the past. You have seen how we have grown and we expect you to grow with us in the future.

I can't even vote but I want to show you how I would vote if I could. Putting my "X" in the middle. I'm Florida Machine-Fleco all the way.

Thanks a lot for your time. Now let's all go back to work.

RESPONDENT'S EXHIBIT 14

Name of Striker	Name of Replacement	Job Classification	Hourly Rate of Pay	Date of Replacement
Snead, Johnnie	Smith, Riley	Crane Opr.	\$1.82	3/10/67
Cross, Lorinza	Dow, Wayne	Scrap Burner	2.00	3/ 2/67
Hendley, Arthur	Laliberte, Robert	Helper, Arc Furn.	1.63	3/14/67
Rivers, Henry Lee	Badger, John	Helper, Arc Furn.	1.74	3/10/67
Erown, Alexander	Joseph, Monroe	Helper, Arc Furn.	1.74	3/ 7/67
Badger, John	Gilbert, Eddie	Helper, Arc Furn.	1.74	3/ 7/67
Dove, John	Ramage, James	Helper, Arc Furn.	1.63	3/14/67
Wyche, Joseph	Smiley, James	Helper, Arc Furn.	1.63	3/14/67
Kelly, Curtis	Johnson, Henry	Steel Pourer	1.84	3/10/67
Cobb, Avery	Roberts, Louis	Crane Operator	1.73	3/10/67
Loyd, William	Jackson, Eugene	Helper, Induction Furnace	1.63	3/ 9/67
Cannon, Melvin	Hutchins, Larry	Molder—Side Floor	2.03	3/ 2/67
Robinson, Joseph	Edwards, Larry	Molder—Side Floor	1.98	3/ 1/67
Ansley, Alfred	Smith, Irvine	Molder—Side Floor	1.74	3/ 1/67
Mobley, Alden	Gardner, Luther	Helper—Side Floor	1.63	3/14/67
Graddick, Nathan	Green, Henry	Helper—Side Floor	1.63	3/14/67
McCloud, Walter Lee	Cole, Steven	Helper—Side Floor	1.63	3/14/67
Cummings, Kenneth	Walker, Edgar	Helper—Side Floor	1.63	3/14/67
Lovelace, Albert	Smith, Willard	Helper—Snap & Bench	1.63	3/15/67
Jenkins, Earnest	Walker, Car	Helper—Snap & Bench	1.63	3/15/67
Hunter, Theodore	Widman, James	Helper—Snap & Bench	1.63	3/ 8/67
Thomas, Ronald	Nichols, Kenneth	Helper—Snap & Bench	1.63	3/ 7/67
Jones, Roosevelt	Williams Raymond H.	Helper—Snap & Bench	1.63	3/ 7/67
Newton, James	Averill, James F.	Helper—Snap & Bench	1.63	3/ 7/67
Martin, Charles	Gamble, George H.	Molder—Slinger	2.62	3/ 6/67
Davis, William	Walker, James	Molder—Slinger	1.98	3/ 2/67
Perry, Albert	Burnett, Morris	Crane Opr.—Slinger	1.73	3/ 6/67
Reddick, Ora	Goodale, Vernon	Helper—Slinger	1.63	3/14/67
Clark, Earnest	King, Grant	Helper—Slinger	1.63	3/14/67
Gates, Oscar Lee	Hinkle, Robert	Helper—Slinger	1.63	3/14/67
Mines, Malichi	Newman, Larry	Helper—Slinger	1.63	3/13/67
Shanks, James	Rose, Benjamin	Helper—Slinger	1.63	3/13/67
Seniors, Thomas	Ansley, George	Helper—Slinger	1.63	3/13/67
Ware, George	Hines, George	Helper—Slinger	1.63	3/13/67
Dasher, Joseph	Ansley, Alfred	Helper—Slinger	1.74	3/13/67
Johnson, Frankland	Wyatt, Joe	Helper—Slinger	1.63	3/ 9/67
Mobley, Roy	Howard, Eugene	Helper—Roller Floor	1.63	3/13/67
Smith, Ben	Redding, Virgil	Helper—Roller Floor	1.63	3/ 1/67
Vason, James O.	Mallory, Dennis	Helper—Sand Preparation	1.63	3/15/67
Gauldin, Edward	Caldwell, Wayne	" "	1.63	3/15/67

Name of Striker	Name of Replacement	Job Classification	Hourly Rate of Pay	Date of Replac- ment
Shirah, Freddie	Caudill, Willie	Coremakers	1.98	3/ 2/67
Smith, Walter L.	Ehlert, Norbert	Helper—CoreRoom	1.63	3/14/67
Wyman, Earl C.	Teuton, Sherman	Helper—CoreRoom	1.63	3/ 9/67
Bellamy, Wilber	Menter, Robert	Sand Mill Opr.	1.74	3/10/67
Driggers, Van	Morgan, Jerald P.	Crane Opr.—Gen.	1.63	3/15/67
Saymore, Grover	Drury, William	Helper—General	1.63	3/15/67
Singleton, Joe	Davis, James F.	Burner—Small Cleaning Room	1.98	2/ 3/67
Smith, Dan	Parrish, Milton	Arc-Air Operator	2.06	3/10/67
Christie, Richard	Wenimer, Charles B.	Helper—Small Clean. Room	1.63	3/13/67
Jackson, McArthur	Thompkins, James	" " "	1.63	3/13/67
Gillyard, Sylvester	Harris, John	" " "	1.63	3/13/67
Thomas, George	Bailey, James	" " "	1.63	3/13/67
Harrell, Willis	Shedd, Roland E.	" " "	1.63	3/13/67
Collins, Willie L.	Mims, Donald	" " "	1.63	3/10/67
Newbill, James	Craig, Harold	Helper—Chip & Burn	1.63	3/14/67
Wright, Herbert	Lewis, James	Helper—Chip & Burn	1.63	3/14/67
Crawford, Sam	Grier, Robert	Helper—Chip & Burn	1.63	3/13/67
Christie, Frank	Williams, Ross	Helper—Chip & Burn	1.63	3/13/67
Howard, Lennie	McDonald, Fred	Arc-Air Operator	1.98	3/ 3/67
Livingston, Edward	Earnett, Charles	Grinders	1.63	3/14/67
Perry, John	Rogers, George	Grinders	1.63	3/14/67
Jackson, Edward	Buckley, Craig D.	Grinders	1.63	3/ 6/67
Woodard, Joseph	Warner, Hillis	Helper—Grinder	1.63	3/10/67
Felton, Willie	Griggs, Charlie	Helper—Grinder	1.63	3/15/67
Wrights, Frank	Albert, Richard	Helper—Grinder	1.63	3/10/67
Gamble, Willie	Brown, Stephen	Helper—Grinder	1.63	3/ 9/67
Miller, Henry	Stallings, Roland	Helper—Grinder	1.63	3/ 9/67
Wesley, Glenn	Bright, Ferman	Helper—Grinder	1.63	3/ 7/67
Hunter, Jesse L.	Hall, Cliff	Roto-Blast Opr.	1.82	3/ 6/67
Terrell, Edward	Scott, Willie	Roto-Blast Opr.	1.82	3/ 6/67
Fudge, Jay Lynn	Miller, W. J.	Roto-Blast Opr.	1.74	3/ 3/67
Brown, Ronald	Wilson, Lorenza	Helper—Heat Treat	1.63	3/13/67
Purdy, Willie	Conner, William	Helper—Heat Treat	1.63	3/13/67
Jones, Freddie Lee	Forshee, Joseph	Helper—Heat Treat	1.63	3/ 8/67
Loznicka, George	Joyner, Eldred J.	Journeyman Machinist	1.98	3/27/67
Benge, Roy R.	McCallister, Harold	Journeyman Machinist	2.73	3/15/67
McCallister, Harold	Howell, Van	Journeyman Machinist	2.73	3/ 1/67
Toake, Leroy	Kowal, John	Apprentice Machinist	1.98	3/ 9/67
Hildum, Roy	Davidson, Gene	Apprentice Machinist	1.98	3/ 8/67
Ricketson, Willie H.	Shanning, Richard	Apprentice Machinist	2.35	3/ 1/67
Handley, John W.	Hines, Delbert	Drill Press Opr.	2.33	3/ 1/67
Thomas, Marion	Tingle, Mike	Helper—General	1.63	3/ 9/67

Name of Striker	Name of Replacement	Job Classification	Hourly Rate of Pay	Date of Replacement
Stokes, Ben	Caldwell, Bobby	Helper—General	1.63	3/ 6/67
Fishburne, Elijah	Wrye, Edwin	Helper—General	1.63	3/ 6/67
Causey, John A.	Maloy, James	Set-Up, Thermit Weld, Assembly	2.62	3/14/67
Boggs, Willie	Mungin, Leon	Helper—Thermit Weld	1.55	3/22/67
Smith, Rufus	Baumann, David	Helper—Thermit Weld	1.63	3/22/67
Mack, John E.	Morningstar, Donald	Helper—Thermit Weld	1.63	3/10/67
Johnson, Richard	Jones, Robert	Welder	2.62	3/13/67
Goodman, William M.	Carter, Stanley	Welder	2.62	3/10/67
Robinson, Howard	Hollington, David	Crane Operator, Pour off/Shake out	2.01	3/ 6/67
Butler, Jimmie	Morgan, Jim	Ladle Operator	1.63	3/13/67
Harris, Alonzo	McKenna, Pat	Helper—Pour Off/Shake Out	1.63	3/13/67
Girtman, Vogle	Dash, Edwin	"	1.63	3/13/67
Brown, Eddie	Davis, III, Birty	"	1.63	3/13/67
Chance, Alex	Williams, Joseph Lee	"	1.63	3/13/67
Waters, Nazaree	John Ellison	"	1.63	3/13/67
Bryant, Melvin	Powell, Arthur	"	1.63	3/13/67
Booth, Adell	Hunter, Theodore	"	1.63	3/10/67
Nelson, Pressie	Roberts, Augustus	"	1.63	3/10/67
Lewis, Thomas	Simmons, Morris	"	1.63	3/10/67
Brown, Walter Lee	Bethea, King Edward	"	1.63	3/10/67
Sheppard, Edward	Johnson, Henry J.	"	1.63	3/15/67
Williams, Terry	Foster, Johnny	Helper—Pour Off/Shake Out	1.63	3/10/67
Benton, George	Daniels, Leonard	"	1.63	3/10/67
Clark, Horace	Lowman, John	"	1.63	3/10/67
Walker, Odis	McWhorter, James	"	1.63	3/ 8/67
Peoples, Dewery	Johnson, David	"	1.63	3/ 1/67
Jackson, Willie	Aikens, Adolphus	Helper—Shipping	1.63	3/14/67
Mungin, Robert	Jones, Arthur	Helper—Shipping	1.63	3/14/67
Baxter, Samuel	Collins, James E.	Maintenance	2.62	3/ 1/67
Smith, Charlie	Evans, Hardy	Helper—Maintenance	1.63	3/15/67
Evans, Billie	Curtis, Charles	Helper—Maintenance	1.63	3/10/67
Withers, James C.	Parker, Kenneth	Carpenter	2.20	3/ 3/67
McClary, Isaac B.	Chaplin, James	Carpenter—Helper	1.63	3/ 9/67
Kohn, Edward	Grissett, Edward	Helper—Vehicles	1.63	3/14/67
King, Clement	Willoughby, Bert	Payload Operator	1.74	3/ 9/67
Wilson, Henry Lee	Robinson, Willie	Laborer—Gen. Plant	1.55	3/17/67
Young, James	Mills, Roger	Laborer—Gen. Plant	1.55	3/17/67
Mosley, Isiah	Johnson, John	Laborer—Gen. Plant	1.55	3/16/67
Reid, Jonathan	Ayers, Buddy	Laborer—Gen. Plant	1.55	3/16/67
Daniels, David	Carter, Tony	Laborer—Gen. Plant	1.55	3/16/67
Wright, Edward D.	Neither, James	Laborer—Gen. Plant	1.55	3/15/67

Name of Striker	Name of Replacement	Job Classification	Hourly Rate of Pay	Date of Replacement
Robinson, Charles	Carter, Willie Lee	Laborer—Gen. Plant	1.55	3/15/67
Taylor, Charles E.	Burden, Jerry	Set-Up—Journeyman	2.23	3/13/67
Mayes, Harrell E.	Richardson, Otis	Set-Up—Journeyman	2.62	3/10/67
McCanless, Franklin	Kruse, Vernon	Set-Up—Journeyman	2.62	3/10/67
Ponce, Merlin	Lynn, Ray	Set-Up—Journeyman	2.52	3/10/67
Tomlinson, John R.	Taylor, William	Set-Up—Journeyman	2.62	3/ 9/67
McManus, Charles	Kelly, Charles	Set-Up—Journeyman	2.23	3/ 8/67
Sarrells, J. E.	Vann, Devon C.	Set-Up—Journeyman	2.73	3/ 6/67
Allen, Andrew	Pickett, Theodore	Set-Up—Journeyman	2.62	3/ 2/67
Shivar, John	Pipkin, Freddie	Set-Up Apprentice	2.35	3/ 2/67
Purdy, Albert	Perry, Albert	Crane Operator	1.74	3/13/67
Green, Edward	Pellicer, Claude	Helper—Fleco	1.63	3/13/67
Peterson, Samuel	Robitzsak, William	Helper—Fleco	1.63	3/13/67
Felton, Lophus	Hansen, Larry	Helper—Fleco	1.63	3/13/67
Sapp, Robert Lee	Cook, James D.	Helper—Fleco	1.63	3/10/67
Scantling, Frank	Harvey, William	Helper—Fleco	1.63	3/10/67
Badger, George	Yarbrough, William	Helper—Fleco	1.63	3/10/67
Daniels, Benjamin	Moore, Nelson	Helper—Fleco	1.63	3/10/67
Fountain, Alpheus	Mathis, Ronnie	Helper—Fleco	1.63	3/10/67
Reid, Luther B.	Morrill, Richard	Helper—Fleco	1.63	3/ 9/67
Gunder, Carther	Fiantaco, Billy Joe	Helper—Fleco	1.63	3/ 9/67
Gordon, Thomas	Cochran, Herbert	Helper—Fleco	1.63	3/ 9/67
Ramsey, Willie	Buckley, Harold	Helper—Fleco	1.63	3/ 8/67
Wright, Willie B.	Graves, John	Helper—Fleco	1.63	3/ 8/67
Mincey, Arthur	Harris, Lemuel	Helper—Fleco	1.63	3/ 6/67
Harris, Bobby	Everett, Thomas	Helper—Fleco	1.63	3/ 9/67
Henderson, Jimmy Lee	McGrane, Michael	Helper—Fleco	1.63	3/ 2/67
Moore, Nelson	Allen, Benjamin	Painter—Fleco	1.79	3/ 7/67
Allen, Billy	Pursell, Douglas	Radial Drill Opr.	1.98	3/ 2/67
Hodges, Ralph	Crim, Daniel	Welder—Journeyman	2.52	3/ 9/67
Miller, Raymond	Dill, Floyd	Welder—Journeyman	2.22	3/ 8/67
Sweat, Tenly	Thompson, Victor D.	Welder—Journeyman	1.98	3/ 7/67
Waye, Eugene	Lee, Leamon	Welder—Journeyman	2.62	3/10/67
Hillyard, Carl	Hilliard, Pat	Welder—Journeyman	2.52	3/ 6/67
Wells, John A.	Davis, Eugene	Welder—Journeyman	2.62	3/ 6/67
Britt, Robert A.	Lowe, Ronald	Welder—Journeyman	2.62	3/ 2/67
Causey, Earl	Richmond, Richard	Welder—Journeyman	2.62	3/ 1/67
Hartley, Owen	Foster, Francis	Welder—Journeyman	2.62	3/ 1/67
Tomlinson, Eugene	Morton, Emery	Welder—Journeyman	2.42	3/13/67
Laurendine, Bobby	Grzesik, Joseph G.	Welder—Apprentice	2.52	3/ 6/67
Kitchens, James	Wiggins, William	Burner—Fleco	2.32	3/13/67
Perkins, Ellis	Colson, Clyde C.	Burner—Fleco	2.19	3/ 7/67
Collins, Robert	Hansen, William	Parts Man	2.03	3/ 1/67

RESPONDENT'S EXHIBIT 14-A

Corrections to Striker Replacement List

(Subpoena List No. 3)

Name of Striker	Name of Replacement	Job Classification	Hourly Rate of Pay	Date of Replacement
Ansley, Alfred	Roberts, Augustis	Molder—Side Floor	1.74	3/ 1/67
Harris, Bobby	Wyatt, Joe	Fleco Helper Helper—Thermit	1.63	3/ 2/67
Boggs, Willie	Foster, Johnny	Weld	1.63	3/15/67
Smith, Rufus	Daniels, Leonard	" "	1.63	3/15/67
Waye, Eugene	Lynn, Ray	Welder	2.52	3/ 6/67
Tomlinson, Eugene	Jones, Robert	Welder	2.62	3/ 1/67
Seymore, Grover	Morgan, Jerald	Helper	1.63	3/10/67

[*1] United States of America
Before the National Labor Relations Board
Twelfth Region

In the Matter of:

Florida Machine & Foundry Com-
pany and Fleco Corporation

and

United Steelworkers of America,
AFL-CIO

Cases Nos.

12-CA-3831

12-CA-3915 (1-3).

Tuesday, January 23, 1968,
Room 765,
Federal Office Building,
Jacksonville, Florida

Pursuant to Notice, the above-entitled Matter came on
for hearing at 9:30 o'clock a. m.

* Numbers appearing in brackets in text indicate page num-
bers of original stenographic transcript of testimony.

Before:

Melvin Pollack, Trial Examiner,
National Labor Relations Board

Appearances:

Arthur R. Mattson, Jr., Attorney at Law, National Labor Relations Board, Twelfth Region, Room 706, Federal Office Building, 500 Zack Street, Tampa, Florida; appearing in behalf of the General Counsel.

O. R. T. Bowden and Charles Henley, Attorneys at Law (Firm of Hamilton & Bowden), 1056 Hendricks Avenue, Jacksonville, Florida, 32207; appearing in behalf of the Respondent.

[2] William C. McCall, 501 Magnolia Avenue, Orlando, Florida; and William T. Edwards, 4203 Henderson Boulevard, Tampa, Florida, 33609; Both Staff Representatives, United Steelworkers of America, AFL-CIO, appearing in behalf of the Charging Party.

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[5]

PROCEEDINGS

* * * * *

[8] Mr. Mattson: Your Honor, I wonder if I might propose a brief stipulation with Mr. Bowden at this time, to get a framework of dates?

I would suggest to propose a stipulation that the Steelworkers filed its election in 12-RC-2550 on August 5, 1966, and thereafter, the election in that case was held on September 22 and 23, at the Respondent's plant, followed up by a certification of the Steelworkers on October 3, 1966.

Mr. Bowden: The only new part there—in Paragraph 6, you allege the election date and certification, which we admitted in the Answer.

Now, I am not sure about the date—do you have—do you [9] have the Petition there, so that we can confirm it? I do not know when it was filed.

Mr. Mattson: I will withhold on that stipulation, then. May we go along with stipulation that the election was on September 22 and 23?

Mr. Bowden: We have already admitted that.

Trial Examiner: They have admitted that, Mr. Mattson. That is in the Answer—also the certification on October 3 is in the Answer.

Mr. Mattson: All right, fine.

I had to refresh my memory on that. I have not reviewed it for a while.

General Counsel will call as its first witness Mr. Harold E. Mays.

Whereupon,

HAROLD E. MAYS

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

Trial Examiner: Would you give your name and address to the Reporter, please?

The Witness: Harold E. Mays, 4759 Heckshire Drive, Jacksonville.

Direct Examination

Q. (By Mr. Mattson) Mr. Mays, you were employed by Florida [10] Machine & Foundry Company and Fleco Corporation, were you not, in 1966? A. Yes, sir.

Q. And, what was your job? A. I was a setup man for Fleco Corporation.

Q. Do you recall the rate you made prior to the strike?
A. 2.72, I believe it was.

Q. An hour? A. An hour, yes, sir.

Q. Now, were you employed at the plant in 1966 prior to the Steelworker election? A. Yes, sir.

Q. About that time, do you recall whether any Company official or supervisor talked to you concerning Union matters? A. Yes, sir.

Mr. Bowden: Your Honor, I am going to object to this. It is apparent that the date to which he is referring is without the statute of limitations. It is not—could not constitute a charge.

Trial Examiner: I take it this is by way of background?

Mr. Mattson: Your Honor, this is background evidence.

Trial Examiner: You may continue.

The objection is overruled.

Mr. Bowden: You have noted our objection, sir?

Trial Examiner: The objection is noted and it is [11] overruled.

The Witness: Yes, sir.

I was called by Mr. Frazier Rhoden.

Q. (By Mr. Mattson) He is the plant foreman, is he not?
A. He is the foreman of the molders of the plant, yes, sir.

Trial Examiner: Will you speak a little louder, please?

The Witness: Yes, sir.

Q. (By Mr. Mattson) About when did this conversation take place? A. He came to my house approximately two or three weeks before the election.

Q. Was anybody else there? A. Well, the conversation took place in the front yard out there, and the only other

person anywhere near was Mr. Rhoden's wife, who was in the car a few feet away.

Q. All right.

Now, what was the conversation at that time? A. Well, it centered mostly around the Union activities out there.

Q. What did he say?

If you will say to the best of your memory, now? A. To the best of my memory out there, what took place in the yard—he had been to the beach because he was still wearing his trunks—he came to the house and wanted to know if it was all right if he talked to me, and I told him it was perfectly [12] all right.

Now, he started right off by saying he understood that I was one of the Union pushers out there on the job, and I told him I was, and I was frankly proud of it.

Q. What did he say? A. Well, then, he starts in, to ask me what I think the Union could get for us that the Company couldn't give us, and all this and all that.

So, I told him my end of it, that the men had elected me on the negotiating end of the Union, and I was with the men in whatever they wanted to do.

So, he said, well, he didn't think that was the way to go about getting anything out there, so I told him that was his opinion of it.

And, I asked him, I said, "Well, what happens when the Union is elected into the plant?"

And, he came back and told me that getting a Union elected into the plant did not get a Union in the plant, that there still had to be a contract signed, and that the Company would never sign a contract with any union.

Q. Was there anymore to the conversation? A. Well, he went on—wanted to know what I was going to do if it came to strike, and I told him that I had explained to the men out there before they elected me on that negotiating committee that I could not afford to walk a picket line

because [13] of my kids in school, and I would have to look for employment elsewhere, which I did.

And, he said, "Well, it doesn't look like you're too strong with the Union, because to go out—you don't feel like you want to strike."

And, I said, "Well, it's not that. I can't afford to strike with them."

He said, "Well, it looks to me that like you'd starve to death on a picket line."

I said, "No, I'll look for work elsewhere," which I did.

Q. Was that about the extent of the conversation? A. That was just about the extent of it.

Q. All right.

Now, did you go out on strike? A. Yes, I went out with the rest of the men.

Q. At the beginning of the strike? A. At the beginning of it, yes, sir.

Q. That was about March 1, 1967? A. Yes, sir, I believe it was around there.

Q. After you went out on strike, did you have any occasion to go back to the plant for anything? A. No, sir, I never went back, except to get any monies that was due to me, war bonds, such stuff as that.

Q. Did you pick up your check or anything of this sort? A. Yes, sir, we picked them up at the main gate—they brought [14] them out to the main gate for us.

Q. And, about how long after the strike started was this? A. You mean—

Q. That you picked it up? A. Well, every Friday, ever when it was due.

Q. Was this the Friday after the strike began? A. I would assume that would have been it.

Q. From whom did you get your check? A. Mr. Luke Morgan.

Q. Did he say anything to you at that time? A. No, sir.

Mr. Mattson: No further questions.

Cross-Examination

Q. (By Mr. Bowden) Mr. Mays, when did you say Mr. Rhoden came to your house? A. It was a few weeks before the election.

Exactly what date it was, I couldn't tell you.

Q. If the election was as alleged on September 22, would you say it was around September 1 or before that? A. It was before the election.

That's about as close as I can give you.

Q. Did you see Mr. Rhoden each day you worked in the plant? A. Yes, sir.

Q. Was he your supervisor? A. No, sir.

[15] Q. Did you see him frequently at the plant? A. Every morning we came in.

Q. Has Mr. Rhoden ever been by your house before? A. Not out here at the house where I live now—for nine years.

Q. Where ever— A. Yes, sir.

Q. —you have lived? Did he used to work in the plant with you? A. Yes, sir.

Q. Do the same type of work you do? A. No, sir.

Q. I mean, as production worker there? A. Not in the same department, no, sir.

Q. I mean, you were both production workers together, were you not?

Mr. Mattson: I object to the relevancy of this.

Is this as to the supervisory status, or—

Trial Examiner: What is the relevancy of this question, Mr. Bowden?

Mr. Bowden: The relevancy of this is to show that they had been workers there together, and it was not unusual for them to speak together—is my point.

Trial Examiner: You may continue, but I think you have made your point.

[16] Q. (By Mr. Bowden) In what department does Mr. Rhoden work? A. He's in the molders' department out there.

Q. He is a molder? A. Foreman.

Q. And, at the time he was at your house, he was not your supervisor——

Mr. Mattson: I object.

That is a conclusion—it is a legal conclusion.

Trial Examiner: He was not your immediate supervisor in your production work?

The Witness: Well——

Trial Examiner: Who was your immediate supervisor? I think you testified that it was Mr. Morgan?

The Witness: Mr. Morgan was my immediate supervisor, but not at the time, now, that he's referring to, that Mr. Frazier Rhoden visited me on occasions.

Now, this took place before—the first time I was employed by the Company, 12 years ago.

Q. (By Mr. Bowden) But, I am directing your attention to the fact—when you said about three weeks before the election that Mr. Rhoden came by your home. A. Yes, sir.

Q. He was not then your supervisor? A. No, sir.

[17] Q. This was Mr. Morgan? A. That's right.

Mr. Bowden: No further questions.

Mr. Mattson: No further questions.

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JOHN W. HANDLEY

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Mr. Mattson) Mr. Handley, about how long were you employed by Florida Machine & Foundry Company?

A. About how long now?

Q. Yes. A. Well, this May, I believe, if I'm—this May it'll be three years.

[18] Q. How many years—three? A. Be three years.

Q. What was your job at the plant before the strike?
A. I worked in the machine shop.

Q. Now, were you working at the plant at the time of the Steelworker election in 1966? A. Yes, sir.

Q. About that time did any Company official or supervisor talk to you about Union matters? A. No, sir—well, yes, sir, in a way.

Q. Who? A. Mr.—

(Pause.)

I believe Mr.—can't recall his first name—Thomas Peacock.

Q. Thomas Peacock? A. Thomas Peacock.

Q. Do you recall about when this conversation took place? A. (No response.)

Q. Was it before the election or after the election? A. It was before the election, yes, sir.

Q. Approximately how long? A. I believe it was in November.

Q. Now, I would have to remind—tell you that the election was in September—September 23, 1966. [19] A. Oh, now wait a minute now.

It was before—must have been October, some time—some time in October because it was before the election.

Q. Do you recall about how many days or weeks before?
A. Well, I can't recall just about how many days it was, I believe it was about three weeks—

Mr. Bowden: Your Honor, may I observe that apparently the witness is confused, because now he says October, and the election was in September.

So, it would have to have been before that.

Mr. Mattson: I think so, but I think we will let the record—I think it is difficult for them to remember exact dates at this time.

Trial Examiner: The witness has testified last that he was spoken to by Mr. Peacock some time before the election, perhaps three weeks.

Mr. Mattson: All right, sir.

Q. (By Mr. Mattson) Where did this conversation take place? A. In the—taken place in the pattern shop off where the maintenance foreman's office connects on.

Q. Was anybody there when you had this conversation?
A. No, sir.

Q. What did he say? A. Well, he asked me how did I—the main reason he called me in the office there, he wanted to talk to me, ask me how, [20] you know, I felt about the Union, and naturally I couldn't express my feelings about it, you know, about the Union, about organized labor at the time.

And, he understood that I would like a better job in the Company—

Trial Examiner: Is this what he said to you?

The Witness: Yes, sir.

The drill press job I had didn't pay enough at the time—at the time it wasn't paying enough for me hardly to get by on.

Q. (By Mr. Mattson) Did he say anything about this job? A. He told me he had it in mind if everything you know, after everything was over, that I was—I was to be kept in mind about this job—different job, if I, you know, if I still wanted it, it was in the record, that I would get it.

Q. What else did he have to talk about? A. Well, he reminded me that I was not getting any younger, every day I was getting older—of course, I know that—and a job was a job, now.

And, that's about it—meaning, you know, trying to put the point over to me.

Q. Was anything mentioned about your children? A. No—well, he said—of course, he asked me how many, he say, according to the record you have got a big family, you know, and I said, "Yes, I have got a big family," and how hard [21] a job was to get at my age, when you get a little older, and—

(Pause.)

Q. Now, did any other foreman or supervisor talk to you around the plant at this time? A. That is before the election?

Q. Yes. A. Yes, sir.

Q. Who? A. Machine shop foreman.

Q. What is his name? A. Ivey—Grady Ivey.

Q. Who was present when he spoke to you? A. Wasn't anyone present.

Q. Was this before or after the election? A. Before.

Q. About how long before? A. Well, I would say—I don't know just exactly how long before, but it wasn't—say a couple or three weeks.

Q. What did he have to say to you? A. He didn't have anything.

I approached him, first. I told him I understood that a few of the employees was getting—had been raised since he had come in the machine shop, and I would love to get a raise, too, because it had been—I hadn't had a raise—well, I hadn't [22] had a raise since I was—I was hired out, I'd say—except a across the board raise that we had got.

Q. Do you remember what he said, exactly? A. He told me that he was at times—he was trying to get around to everybody and he would get to me if I would give him time, he was working on it.

Q. Did he say anything later about this raise? A. Well, he come in there one morning before the election and said, "I got you a dime, John."

I said, "Okay."

And, "Would be on your next check," but it wasn't on the next check. It was a couple of weeks later, when everybody else got their raise, too.

Q. Was this after the election or before? A. Before the election.

Q. When did the raise show up—before or after the election? A. Well, it showed up before the election on my check.

Q. Did you go out on strike when the Steelworkers strike was called on February 28, 1967? A. I most certainly did.

Q. After that, were you notified to return to work at any time? A. No, sir.

Q. During the strike? A. No, sir.

[23] Q. After the strike was over? A. After I had been told to apply to the Labor Board and go through the procedure there, you know, and then I was—I was to call down there—I was told to call, and I called, and they

hadn't decided to give me my job back, yet, they had to get together on it.

And, I'd keep calling back in the meantime.

Q. Calling whom? A. The Company—the personnel manager.

Q. Mr. Cline? A. Mr. Cline.

Q. Did you finally go back to work? A. Yes, sir.

Q. Do you recall about what month that was? A. First of September.

Q. When you went back, to what job did you go back? A. Same job.

Q. And, that job is as what? A. Drill press operator.

Q. All right.

Now, before the strike, how much were you earning an hour? A. 2.34, I believe.

Q. Now, after you returned to work, was there any change in your wage rate? A. There was not then, no, sir.

[24] I hired back in at the same thing.

Q. I see.

Was there any change later? A. There was a change later.

Q. To how much? A. 2.56.

Q. About how long after you went back did you get this increase to \$2.56? A. I'd say—I might be wrong—I don't know just exactly how long it was, but I believe it was—I've been back there now going on five months, and I believe it was four months—September, October, November, December—January going on five months, the first of January—a couple of months after I went back.

Mr. Mattson: No further questions.

Cross-Examination

Q. (By Mr. Bowden) Mr. Handley, do you remember when you contacted the Company about reinstatement?

A. (Pause.)

I believe it was in the first of October.

Q. Now, you were reinstated around September 1, 1967, and I will ask you if you did not actually apply for reinstatement around August 14, 1967, a couple of weeks before you went to work?

Mr. Mattson: General Counsel will stipulate to that, to [25] save time.

Trial Examiner: Well, do the Company records show this?

Mr. Bowden: Yes.

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Q. (By Mr. Bowden) Mr. Handley, do you know whether the Company has a policy of automatic progression, provided you have been there for a certain length of time, in order to get a raise? A. No, sir.

Q. You do not know that? A. No, sir, I don't.

Mr. Bowden: I see.

No further questions.

Mr. Mattson: You are excused.

I have no further questions.

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[26]

ALEX CHANCE

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn was examined and testified as follows:

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Direct Examination

Q. (By Mr. Mattson) Mr. Chance, about how long have you worked for Florida Machine & Foundry? A. This coming August, I have been there 10 years.

Q. What was your job classification prior to the strike? A. I was a rigger and also a steel pourer—poured steel, too.

Q. And, what was your rate per hour? [27] A. \$1.83—.84.

Q. I call your attention to the Steelworker election in September of 1966.

Were you employed at the plant around that time? A. That's right.

Q. About that time, did you have any conversation with any official or supervisor concerning the Union? A. That's right.

I was called in the production office.

Q. What office? A. The production office.

Q. By whom? A. By Mr. Tommy Madison.

Q. Was this before the election or after it? A. Before the election.

Q. About how long? A. About two—about two weeks before the election.

Q. Who was in the office with you? A. Nobody but me and Mr. Tommy Madison.

Q. What did he say? A. He told me that he heard that the fellows was trying to get a Union in there and axed me did I know anything about it.

I told him no, I didn't—fact, I didn't.

So, he told me, he said, "If you hear anybody trying to get a Union in here, coming in here trying to sign cards or [28] anything," he say, "you get with us and let us know or either let your foreman know," and I told him I would.

Q. What else was said? A. So, he said, well, he say, "You know how in '58, how this Union was" and he say, "You got a big family like myself, and you don't want to lose your job."

And, I say, "No, I don't. I want to stay here and keep my job."

He say, "Now, this Union ain't nothing but upsetting a place."

I say, "Yeah, your're right."

Q. What was this he said about 1958? A. He said they had a bad strike there in '58 and upset the place bad and caused a big confusion.

Q. Did he say anything else about that? A. No, he didn't say nothing else about it. That was all he said.

Q. Had you been there in 1958? A. Yes, I went to work there in '58—went to work there the last of '58.

Q. Did Mr. Madison have anything in front of him, any papers, when he talked to you? A. Yes, he had my picture and also my contract, where I stated to work there, and all.

Q. Was this your personnel file? [29] A. That's right.

Q. After that, did any other official or supervisor talk to you? A. No more than they had a meeting—Mr. George Peacock had a meeting right out there on the snap.

Q. The snap floor? A. The snap floor, one night.

Q. What building is that? A. It's out there where you make the small snaps in.

Q. About how many people were there? A. Our whole night shift was out there.

Q. And, was this before the election or—— A. That's right.

Q. Or after—how long before? A. Well, I can't remember how long before, but it wasn't too long before, when he made the speech out there on the snap floor.

Q. Was it more than a month or less than a month? A. About a month—just about a month.

Q. Do you recall what he said? A. Yes, sir.

Q. What did he say? A. He said he heard that the boys was trying to get a Union in there.

He say is was a un-union job.

[30] Q. He said what? A. It was a un-union job, and as long as he had something to do with the plant, it never would be a Union brought in there.

Q. Do you recall anything else that was said? A. That's all that was said.

Q. Did you attend any other speeches? A. What was that?

Q. Were there any other speeches in the plant that you attended? A. Well, there was one more meeting there.

They brought everybody that night—they cleaned out the whole place back there in the plant—big place back there in the plant, and Mr. Russell—he came in that night and made a speech.

Q. Is that Mr. Russell, the President? A. Yes, sir, Mr. Russell, that's right.

He made the speech that night himself.

Q. What did he say? A. He come in and this was before the election, and he came in with a big, wide piece of paper, about that wide——

(Indicating.)

—and, he told the whole crew, the whole shift—he say he couldn't vote, but if he could vote, he'd vote for the Company and he say, "If I could vote," he say, "I'd vote just like this."

[31] (Indicating.)

"No."

Q. Do you recall anything else he talked about? A. That's all—he told us about that.

Q. The Union strike started on February 28, 1967. Did you join the strike? A. Yes, sir, I went out with them.

Q. All right.

After the strike began and you were out, did you have any occasion to go back to the plant to pick up any checks? A. Yes, I had to go back and pick up my check that Friday.

Q. The Friday after the strike began? A. That's right.

Q. Did you talk to any official or supervisor? A. Nobody but Mr. George Peacock.

He's the one give me my check.

Q. Mr. George Peacock gave you your check? A. That's right.

Q. Where did he give it to you? A. To the gate, the front gate.

Q. What was he doing there? A. Well, he brought the checks—brought my checks—check, and one or two more, there, and said he paid them off right there at the gate because he didn't want them on the premises no more, said they was terminated and had been replaced, and [32] he didn't want them on the premises because they was terminated, had been replaced.

That's what he told me, so I got my check and I left

Q. Do you recall who was with you at the time? A. No, I can't—I don't know all who was there with me, then.

I can't remember who it was with me, but that's what he was—that's what he told me. He told me, he said, "Chance you have been reterminated (sic) and been replaced."

Q. After the strike, did you return to work for Florida Machine and Foundry? A. Not until they sent for me.

Q. About when was that? A. (Pause.)

I think I went back to work there in August—I believe August I went back—I believe it was.

Q. August of 1967? A. Yes, that's right.

Q. To what job did you go? A. Well, they put me in there helping pouring steel and shoveling.

Otherwise (sic), I didn't get the same job. I mean, they just put me on a job—they gave me a shovel and a broom.

Q. Now, did you go back at the same pay? A. Same pay.

[33] Q. Same as before the strike? A. That's right.

Q. Now, after you went back, was there any change in that pay? A. Yes, they changed—there was a raise.

Q. What—how much of a raise? A. A dime.

Q. A dime? A. (Nods affirmatively.)

Q. A 10 cent raise? A. (Nods affirmatively.)

Trial Examiner: The answer is yes?

You will have to speak up, because he has to hear what you say .

The Witness: One 10 cent.

Q. (By Mr. Mattson) How long after you went back did you get this dime raise? A. About two months.

Q. Who notified you of the raise? A. They put it on the board—put it across the board.

Q. What did it say on the board? A. All employees get a 10 cent raise.

Q. Did you know whether other employees were getting raises at that time? A. No, sir, I don't.

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[34]

Cross-Examination

Q. (By Mr. Bowden) Mr. Chance, what shift were you working when you went back? A. When I went back this last time, split shift.

Q. You worked part time on the second shift? A. I worked straight through on the split shift.

Q. That is a night-time job? A. That's right.

Q. Now, on the 10 cents that you got, I ask you if two cents of that was the shift differential increase, and eight cents hourly rate increase?

Isn't that right? A. I guess so. I don't know.

Q. As a matter of fact, everyone got that increase on your shift, didn't they? A. That's right, far as I know.

Q. In fact, it was posted on the board that everyone was going to be raised this amount, wasn't it? A. That's right.

I don't know whether everyone get it or not.

Q. When did you apply—

Well, did you go up to the Company to apply to go back to [35] work? A. I did.

Q. Do you remember when that was? A. It was in July—now, what date, I can't remember it, but it was in July—I believe it was.

Mr. Mattson: I will go along with the pleadings.

We pleaded July 10, and it has been admitted to be July 10 in the Answer.

Mr. Bowden: Well, we are checking, to make sure so it will be right here in the record.

Trial Examiner: The pleadings are part of the record.

Q. (By Mr. Bowden) If the record shows that you re-applied on July 10 and were rehired on August 28, 1967, would that agree with your recollection? A. I guess so.

I went back there to my job.

Q. Whom did you see when you went back? A. The personnel manager.

Q. I see.

Is that where you were instructed to go? A. That's right.

Q. Well, when you went and reapplied, they asked you for your address at that time, did they not? A. That's right.

Q. And then, when you were recalled, was that a letter [36] that they had written to you, telling you to report back to work at a certain time? A. That's right.

Q. I see.

Mr. Bowden: No further questions.

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JAMES A. KITCHENS

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Mr. Mattson) Now, Mr. Kitchens, how long were you employed by Florida Machine and Foundry?

A. 16 years and three months, employed at Florida Machine and Foundry.

Q. Prior to the strike, what was your job classification?
A. I was burning at the time.

[37] Q. At what wage rate? A. 2.62 an hour.

Q. Mr. Kitchens, the election involving the Steelworkers took place in September of 1966.

About that time, do you recall whether you had any conversation with any Company official or supervisor about Union matters? A. Yes, sir.

Yes, sir, Mr. Tommy Madison called me to the office over there at the foundry office.

Q. About when did this happen? A. About a week before the election.

Q. Who else was there when you got in there? A. Nobody but he and I.

Q. When you got in there, what was said? A. Well, he asked me, how did I feel about it.

Q. Feel about what?

Did he say? A. The Union, this talk about—things about the Union—you know, about the plant—

Q. Just try to remember what he said—what he said to you. A. I can't remember all that—been more than a year ago.

Q. All right.

But, to the best of your memory, what do you recall now? A. Well, he said—you know, back in '58—"remember back in [38] '58?"

I said, "yeah, I remember that very well."

He said, "remember what happened?" and all that, you know.

Q. Were you there in 1958? A. Yes, sir.

Q. What happened in 1958? A. Well, they had a strike in '58.

Q. Do you recall what Union was involved?

Well, was it a Union? A. Yes.

Q. Which Union was it? A. Foundry Union struck, and the machinists and welders came out with them. They belonged to the Machinists Union.

Q. I see. A. And, we came out in sympathy with them, you know.

Q. So, you were in the machinists' section? A. No, I was in the welding department at that time, in the back of the machine shop.

Q. Do you know how long that strike lasted?

Trial Examiner: Mr. Mattson, I consider—

No, I will take that back. You may continue.

Q. (By Mr. Mattson) Do you recall how long that strike lasted? A. I think the molders picketed out there for six months, as best I remember.

[39] We went back to work—the welders—a bunch of us—some of them went back, two or three at a time—it ain't any of our business, they told—

Mr. Bowden: Your Honor, this is immaterial and irrelevant.

We are talking about 1958, now, and he is giving details about this occurrence.

Trial Examiner: I think the details are too remote from this proceeding.

You have had a six month strike in 1958—which lasted for six months.

Now, we are not going to litigate what went on in 1958. I am taking the testimony with respect to that strike only insofar as we have had these conversations before the election of 1966. I do not wish to get into the strike itself.

Q. (By Mr. Mattson) Mr. Kitchens, after that strike you spoke of, do you recall—from after that strike to the time the Steelworkers were certified, whether any Unions represented the employees thereafter? A. No.

Q. There were no Unions after that strike? A. No, we lost the strike, and there wasn't any Union.

Q. Now, the strike began on February 28, 1967.

Did you go out on strike? A. Yes, sir.

Q. And, since you went out on strike, have you ever been [40] called back to work? A. I had a letter from the personnel office, Mr. Everett Cline.

Q. And, what did the letter ask? A. Come back.

I hadn't—I went down to get application one day, way before then, and Mr. Cline had came down out of his office to the main office out there in the yard. He said he couldn't go back there and get an application. I asked him what—I have to fill out a application, and he said yes.

So, I didn't fool about it no more. I just didn't go back no more.

So, about August, I think, 14th, I had a letter from him wanting—asking if I wanted my job, come down and interview, and I went down and he told me——

Q. Who is "he"? A. Mr. Cline—and, he said, "You go back on your day shift, 2.62 an hour," and he said, "You'll have to——"

I said—I asked him, "Well, do I fill out an application?" I'd heard you would, you see. I asked him would I have to fill out a application to start as a new man again. I had heard that is what they was doing, you see, and he said yes.

I said, "Well, I won't accept like that."

Q. You said you had been there—— A. I'd lose my seniority, you see, three weeks vacation and [41] all.

Q. Did you ask him about your seniority or your vacation? A. I told him, yes, sir.

Q. What did he say about these? A. He said no, I wouldn't get it—start back as a new man.

I said, "Well, after 16 years and three months, I start back as a new man?"

He said yes.

Q. I believe you said you had been to the plant before and talked to somebody? A. Yeah, I went in to get—to see about my vacation pay.

Q. How long after the strike started was this? A. Oh, it was about two weeks or three—about three weeks.

Q. What happened? A. I saw Mr. Luke Morgan about it, and he said he'd go see about it. He went up there and looked and he says, "Here, I don't know whether you qualified before—whether you qualified for a vacation."

I told him, I say, "I ought to be. I came here in '51, November 20th," and I said, "I worked a year and on past November again, and on back to June, when vacation started, you see, about a year and a half.

Q. So, what did he say? A. I said I presume I done past my year, and he said, "Well, check into it. We'll go to the main office and check."

[42] Q. Did you go up to the main office? A. Went over to the main office, yes.

Q. Whom did he talk to? A. He checked and they found—and, I got my vacation.

Q. They gave you your vacation pay? A. That's right.

Q. Now, when you were over there, did any other foreman or Company official talk to you about the job, while you were there?

Did anybody talk to you about the work? A. No, sir.

Q. Now, did you have any occasion to go to the plant after that? A. I went back to get my tools and . . .

(Pause.)

Q. About how long after the strike began did you pick up your tools? A. It was about three weeks—about two weeks, I guess—a week—about a week, I guess, because I had went to work, you see.

Q. Now, when you picked up your tools, did you see either the foreman, Luke Morgan, or George Peacock at that time?

Mr. Bowden: Your Honor, I have been letting him—allowing him to lead the witnesses quite a bit, because it would help.

[43] But, I think we are getting a little bit—

Trial Examiner: I think he has just been leading on preliminary matters.

Mr. Bowden: I do not think this is preliminary.

Mr. Mattson: I am now just referencing a subject matter.

I am saying did he see Foreman Morgan or Mr. George Peacock—is all I have asked at this time.

Trial Examiner: The objection is overruled.

Q. (By Mr. Mattson) When you went back to pick up your tools, did you see either of these men? A. I saw Mr. Morgan.

And, I told him I'd like to get somebody to go back there, I wanted to unlock my locker back there, where I could get my tools—get my tools, and he said, "Wilcox is back there. Mr. Wilcox is back there. He'll be with you."

Q. Who is Wilcox? A. He's foreman in Fleco.

Q. All right.

Then what happened? A. I just got my tools and came on out.

Q. While you were in there, did anybody say anything to you? A. No.

Q. Did anybody— A. Right after the election Mr. Morgan passed by me one day back there, said, "Jim, we're gonna whip 'em"—just like [44] that, see?

Q. This was Mr. Morgan, right after the election in 1966? A. Right after the election, about a week, I guess—two or three days, a week, something like that—after the election.

He said, "We're gonna whip 'em."

And, that's all was said to me about any of it.

Q. After you went on strike, did anyone suggest to you whether you should come back to work, or that you should come back to work? A. No.

Mr. Mattson: No further questions.

Cross-Examination

Q. (By Mr. Bowden) Mr. Kitchens, when you received the letter to come back to the Company in reference to your job, did they offer you a job paying \$2.62 an hour? A. Yes, sir.

Q. And, this was on the day shift, where you had previously worked? A. Day shift, burning.

Q. Same job you had? A. Same job, same pay, day shift.

But, they wouldn't give me my seniority, my three weeks vacation.

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[45] Mr. Bowden: Your Honor, I trust that the record will show that a continuing line of objection these incidents that happened without the six months period—

Trial Examiner: Yes, the record will show—will reflect that you have a standing objection to all of the background evidence or any evidence that occurred more than six months before the filing of the charge.

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THOMAS LEWIS

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

* * * * *

Direct Examination

Q. (By Mr. Mattson) Mr. Lewis, how long were you employed by Florida Machine and Foundry Company?

A. I started at Florida Machine and Foundry in 1961.

I can't recall just the exact day, but it was in 1961.

Q. What job did you have just before the strike in 1967? [46] A. I was a shakeout operator.

Q. What was your rate of pay? A. \$1.74.

Q. Now, Mr. Lewis, in 1966, September, there was a Steelworkers election.

Were you at the plant at that time working? A. I was.

Q. About that time, did any Company official or supervisor talk to you about Union matters? A. Mr. Tommy Madison did.

Q. About when did this conversation take place? A. I can't tell you just the exact date—I don't know the exact date—when it was.

I guess it was a couple of weeks before the election, but I don't know the exact date.

Q. Where did he talk to you? A. He talked to me in the little office around there in the—in the—I'll tell you in a minute—in the warehouse.

Q. Was anyone there with you? A. Nobody, just me and him.

Q. What was said? A. He had—he had my time when I started—he had it out there on the desk, and he asked me, he said, "Thomas."

I said, "Yes, sir?"

He say, "You've got a good record."

[47] I say, "I'm glad of that."

He say, "What do you think about the Union?"

I say, "Well, I don't have any thoughts about it, Mr. Madison."

He say, "Well, I'll tell you what," he say, "You know, a long time ago, in '58, there was a strike."

I say, "Well, I wasn't here in '58. I don't know anything about what happened in '58." So, I think that was all me and him talked about on that matter.

Q. Did you attend any Company meetings prior to the election? A. I did.

Q. About how long before the election? A. A couple of weeks.

Trial Examiner: Mr. Mattson, these are the meetings about which we have had a witness testify previously?

Mr. Mattson: Yes, I think—well, I believe there is a series of meetings.

I believe the previous witness talked about a small meeting by Mr. George Peacock, and there was one, I believe where Mr. Russell was mentioned.

Trial Examiner: Yes, we have had testimony about a meeting, about Mr. Russell.

So far as this background is concerned before the election, I think that we have sufficient testimony from witnesses with respect to—if their testimony is to be accepted—with [48] respect to Company hostility to the Union.

Mr. Mattson: I will try to be more selective.

I think what I would like to make sure I get in the record are the specific statements, which I hope will be recalled, or perhaps recall certain subject matters which I think throw light on later events.

Trial Examiner: I see.

You may continue.

Q. (By Mr. Mattson) Now, at this meeting you just spoke of, who talked to the employees? A. Well, Mr. Russell made a speech out in the front to everybody that day that there wasn't going to be no Union, they didn't want no Union, it could be like it was in '58, which that didn't apply to me because I wasn't there in '58, but I was in the meeting.

So, he said, "if you go out, you ain't gonna have no job left," is what he said.

Q. Now, did you go out on strike after February 28, 1967? A. I did.

Q. Did you have any occasion to return to the plant for your check? A. Yes, I did.

Q. How long after the strike started? A. After the strike, it was about—around the 9th or 10th.

Q. Of March? [49] A. Right.

Q. Did you talk to any Company official there? A. When I went in, to get my last check, Mr. George Peacock paid me off at the gate, and he told me, he said, "Thomas," he said, "You have been replaced."

Q. Did he say anything else? A. And, I asked him, I said, "Do I get a vacation check?"

So, he sent—I don't know the man he sent back in the office, but when he went back in there, he come back with a little white slip and told me that I wasn't able for a vacation.

Now, but why, I don't know.

Q. He did not give you an explanation why? A. He just told me that I wasn't able for a vacation.

Q. Now, after the strike ceased, did you return to work at the plant? A. I went back down there to apply for my job.

When I went back down there, Mr. Cline said, "You come back to go to work?"

I told him, yes. So, he give me a application blank to fill out, and I didn't fill it out. I walked out. I never did go back no more.

Q. Did he tell you about what kind of job you would have to go back to? A. Yes, sir, I'd have to fill out a new application and bring it back.

[50] Q. When you went in on that occasion, did you say you were there to go back to work? A. Right.

Q. Now, after that did the Company notify you to return to work later? A. I got a letter later on after that.

Q. Did you return to work at the plant? A. I did.

Q. Did you return to your old job? A. Went back to the same job.

Q. Do you know whether you were employed as a new man or— A. They didn't—only thing I know, I went back at the same pay as I went—when I went out.

Q. You do not know about your vacation or seniority? A. No, I don't know nothing about that.

Q. What pay did you get when you first went back? A. I got \$1.74 the first check that I made. And, the next check that I got was—they give me—give us a eight cent raise—I'm making 1.82 now.

Q. After you went back to work, did you observe that any new men were employed at the plant—any new employees were hired? A. Well, I went back in—when I went back in, there's so many new ones in there that I couldn't remember—couldn't tell you who all they was.

There was a lot of new ones in there which I don't even [51] know.

Mr. Mattson: No further questions.

Cross-Examination

Q. (By Mr. Bowden) Mr. Kitchens, when you went up to see Mr. Cline, if the records indicate that was on July 13—July 10, and that you were rehired on September 27, would that agree with your recollection? A. In '61?

Q. No, I am talking about 1967—last year, when you applied to Mr. Cline, when you got the letter to come back to work. These dates—according to the Company records, you applied to Mr. Cline after the strike on July 10, 1967.

Does that agree with your recollection?

Mr. Mattson: General Counsel will stipulate to that.

Trial Examiner: Is that acceptable to you?

Mr. Bowden: Yes, that is all right.

Q. (By Mr. Bowden) And, that you were re-employed on September 27, 1967?

Mr. Bowden: Well, will you stipulate to that, also?

Mr. Mattson: This I have no knowledge of.

Mr. Bowden: I see.

The Witness: I reckon that's what it was.

Q. (By Mr. Bowden) All right.

You went back to the same job at the same rate? A. Same job.

[52] Mr. Bowden: No further questions.

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JAMES C. WITHERS

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

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[53]

Direct Examination

Q. (By Mr. Mattson) Mr. Withers, about how long were you employed by Florida Machine and Foundry? A. About nine years.

Q. What was your job prior to the strike? A. I was a carpenter.

Q. At what rate? What was your rate of pay? A. 2.20.

Q. The Steelworkers called a strike on February 28, 1967, and I ask if you honored that strike, or went on strike at that time? A. Yes, sir.

Q. Now, did you have any occasion after that strike commenced to talk to any official or supervisor at the plant? A. Yes, sir, the day of the strike I got a permit from that fellow out there to go back across the line.

I was going to do some church work, and I went in, got a saw and a hammer and a plane—I don't remember just exactly what all I got, but I knew I got that. So, I went back—me and my helper, the one that worked with me—went back to the carpenter shop, and Mr. Thomas Peacock was standing there.

And, I unlocked my box and got that stuff out of it, and he said, "Why don't you take it all?" He said, "You ain't gonna work here no more."

[54] So, I didn't pay any attention to him—well, I did. I said, "Why"?

And, I took my stuff and went on, and that was all that was said then.

Q. Now, prior to the strike, let me direct your attention to September of 1966. There was a Steelworkers election.

Did you attend any plant meeting where Mr. Russell gave a speech? A. Yes, sir.

Q. Do you recall about how long before the election this was? A. Well, I imagine it was about two or three weeks.

I don't remember the date.

Q. Well, was it a large group meeting— A. Yes, sir.

Q. —or small? A. It was a large—all of them, I suppose that was there.

Q. Do you recall anything that Mr. Russell said during this speech? A. Yes, sir.

Mr. Russell brought up the strike before, and told us—went to speak concerning what happened during the strike, and he went on and talked right smart. I believe he said something concerning the progress and what the plant had done, and along toward the end of the strike, he said—he said, "I'm a-gonna [55] say something that's not lawful for me to say."

And, well as I remember, he said, "We won't have a Union——"

Now, I could have this mixed up with another talk—he said—the boys told me he said—now, I don't hear too good—that he said——

Mr. Bowden: Now, Your Honor, I am going to object to this what the boys told him.

Mr. Mattson: I will go along with that.

Q. (By Mr. Mattson) Mr. Withers, I want you to be very careful not to state anything that the boys told you.
A. All right.

I'll do my best.

Q. Try to the best of your recollection to tell us only what you yourself recall Mr. Russell saying. A. Well, yes, sir.

Yes, he spoke concerning the tickets, about voting for the Union, and he said in that he would put a cross in it and vote, "No".

And that's about all I remember about that.

Q. Now, you said something about—that he said something about this was not lawful.

Do you recall— A. That's right.

Q. What did he say? Will you get the complete statement there?

[56] Trial Examiner: If you heard it.

Mr. Bowden: I thought this was what the boys told him.

Trial Examiner: Right after he said he was going to say something "not lawful" for him to say, did you hear what he said?

The Witness: Well, as I remember what he had to say—that we wouldn't have a union.

Q. (By Mr. Mattson) You heard him yourself say that? A. Yes.

Q. Now, after the strike began, you testified that you had gone back to the plant on the first day of the strike? A. Yes, sir.

Q. Was that about March 1, 1967? A. That was the day of the strike.

Q. The day of the strike? A. Yes.

Q. After that, did you have any occasion to go back and apply to return to work? A. Yes, sir, I believe the part of the shop workers that's the machine shop workers and the pattern makers—if I make no mistake, they went in on the 17th.

Q. Of what month? A. Of the same month.

Q. March? A. They went back, and I believe they went in on the 16th, and I believe it was the 17th I went in—it was the day after [57] it happened, anyway, they went back, I went back.

I had got a notice that I had been replaced. In the mail, I got notice that I had been replaced, and I decided, well, I'll go down and get my tools.

Well, I went down and my box had been knocked open—pulled open, or something—it was open, and some of the stuff was gone. And, I went into the pattern shop—I wanted to know where it was at. I went into the pattern shop, so the pattern maker got after me—he said, “Mr. Withers,” he said, “We don't want to see you leave.” He said, “Why don't you go up and have a talk with Mr. George?” That's Mr. George Peacock.

I said, “All right.” I stood there and studied about it for a little bit, and I said, “All right.”

I went up in Mr. Cline—I went up to Mr. Cline's office, and Mr. Cline called Mr. George, and he said, “You can just wait right here in the hall,” and I waited a few minutes, and Mr. George come out, and he went back—he said, “Just wait a minute,” and he went on out and come back.

He said, “Mr. Withers,” he said, “You've done been replaced.”

So, Mr. Cline told me at the same time that I was replaced on Monday after the strike.

And then in July, I went down and applied, and they told me that I had been replaced, that I'd be next man on record, to fill out a application, and I took the application, folded [58] it up and stuck it in my pocket and carried it home. I don't know what become of it.

So, I haven't been back any more.

Q. Did they explain to you what this application was for? A. Yes, sir.

Q. What did they say? A. To hire in as a new man.

Mr. Mattson: No further questions.

Cross-Examination

Q. (By Mr. Bowden) Mr. Withers, when you went down in July, and from the Company records this appears to be July 25, 1967.

Does that agree with your recollection? A. I don't remember just exactly what date it was.

Q. I see.

You would not dispute that this is the date you were in there? A. No.

Q. I see.

Mr. Mattson: I beg your pardon.

Which occasion now are we talking about?

The Witness: July.

Mr. Bowden: July 25—he said he was in there in July. Is that right?

Mr. Mattson: That is fine.

Mr. Bowden: All right.

[59] Q. (By Mr. Bowden) At that time, you applied for a job, and they asked you to complete an application. This was in the personnel office.

Is that right? A. That's right.

Q. Did they indicate there was work for you there at that time? A. No, he said, "You'll be next on the list."

Q. Oh, you would be next? A. That's right.

Q. Did he give you an idea of when that would be? A. No.

Q. In other words, all you had to do was fill out the application and you would be next to be employed.

Is that correct. A. That's right.

Q. And, you refused to fill out the application? A. That's right.

Q. When was it that you said you went back?

You said at one time, as I understood it, that you went back the day after the strike or the day of the strike to get your hammer and saw, or something? A. The day the strike took place.

Q. That was on February 28, 1967? A. Yes.

[60] Mr. Mattson: I would direct your attention here, Mr. Bowden, to the fact that the 28th is the—the strike was called that night at 9:30, on the night shift, so—

Trial Examiner: The actual first day of the strike was March 1, 1967?

Mr. Mattson: March 1.

Mr. Bowden: That is right.

Trial Examiner: All right.

Q. (By Mr. Bowden) All right, sir.

What happened when you went back to get your tools?

You saw Mr. Peacock, I believe you testified? A. He was standing there.

Q. And, he told you to take all of your tools at that time.

Is that right? A. That's right.

Q. All right.

Did you go back there again before July 25, then? A. Yes, sir.

Q. What date was this? A. I believe—as well as I remember, it was on the 17th—it was the day after—

Q. The 17th of what? A. The same month.

Q. Same month? A. Yes, sir.

[61] Q. You are not talking about March 17? A. That's right.

I believe it was the 17th. It was on a Tuesday, I believe.

Trial Examiner: I gather from your testimony, Mr. Withers, that you received the letter that you had been replaced about March 16, and you came to the plant the next day which would have been March 17, 1967?

The Witness: That's right.

Q. (By Mr. Bowden) And, what was the purpose of your coming to the plant on that day, March 16 or 17?
A. 17th?

Q. Yes. A. I went to get my tools.

You see, I had done been notified through the mail that I had been replaced.

Q. All right, sir.

* * * * *

[62]

EDDIE BROWN

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

* * * * *

Direct Examination

Q. (By Mr. Mattson) Mr. Brown, what was your job classification and pay rate prior to the strike? A. Well, it was \$1.74.

Q. What was your job? A. Well, I was working in the steel area as a skimmer.

Q. A skimmer? A. Yes, sir.

Q. How long had you worked for the Company? A. Well, I started—it was around February, 1958.

Q. Now, there was a Steelworkers election at the plant in September of 1966.

Did any Company official talk to you about that time about union matters? A. Well, Mr. Tommy Madison—he called me over to the office and talked to me about it.

[63] Q. About how long before the election? A. It was about—I'd say, around about three weeks.

I don't know exactly.

Q. Who else was in the office when you got there? A. Well, in the office that night, wasn't nobody there but me and him.

Q. When you got into the office, what was said? A. Well, he was telling me what had happened in '58, and when I went down there, I went across the picket line then—in '58—he was telling me about what had happened to a lot of the men.

Q. What did he say? A. During the time—he was telling me about the men that had lost their jobs and homes and things like that.

Q. Did he say anything else? A. Well, he told me about the other job that was doing fine without a union, and things like that, and then he said, what do I think about it, and I told him—right then, I couldn't say—I couldn't give my exact opinion about it, because I was—you know—probably wouldn't have my job.

So, I told him, I said, "Well, so far, I don't—you know—we been doing pretty good without the Union. I don't see where it should come in and we'd have a union. We doing—you know—pulled out of the whole we was in in '58."

Q. What else was said at that time? [64] A. So, he was telling about if we would get a union in now, what it would cause—it would bring strikes, losses like that, we'd have to pay union dues and all like that.

Q. Anything else? A. And so—

(Pause.)

I think that's about all he was talking about, but anyway he was talking in behalf about the Union—say if we would get a union in there, what it would cause—it would cause strikes, and all like that.

He said—you know—what Mr. Russell had said. He said that if we'd get a union in a job like that, it would cause strikes and confusion in the plant. He said he'd been working 40-odd years without a union and didn't want no union and Mr. Russell wouldn't want no union.

Q. Was anything said about contracts or negotiations?

A. Well, he never did say anything about no contracts or anything like that.

He was just talking about what I thought about the Union, and all like that.

Q. Were there any other occasions when Company officials talked to you, about this time? A. Well, Mr. Thomas—Mr. George Peacock had come down there one night. We was pouring steel, and he was talking to us about he heard that the men had—was going—a union was [65] coming up, and what do we think about it—you know?

He said, "You know, even since '58, that we been improving the place better" and all like that—you know—for the mens (sic) to work—you know, better equipment, everything like that, for the mens to work.

Q. Now, to whom was he talking—to you or— A. He was talking to a group of us there.

Q. About how many of you were there? A. I'd say about 15 or 20 of us—you know—the men who pour steel and all.

Q. Where was this taking place? A. That was during—I think it was around—one night—they came out around 4 o'clock one night. They came down there, told us that they couldn't sleep, they heard what was going on and

they couldn't sleep, so they decided to come down there and talk with us about it.

Q. Do you recall anything else that was said? A. Well, he just told us about the Union and all—you know—heard about we was gonna vote for a union and all what we should do.

He said we could get along better without a union. We should think—you know—towards that, because you know how it was in '58, and we been trying to get unions in there and all.

Q. Now, the strike began on February 28, 1967.
[66] Did you go out on strike? A. I did.

Q. Were you on the day shift or night shift at the time? A. I was on night shift.

Q. When did you go out on strike? A. I went out that night.

The strike started around about 9 o'clock that night, and I came in and punched the clock and went back out.

Q. After that did you get a notice of termination from the Company? A. I did.

It was about a week or two after that that I got it.

Q. After the strike began? A. Yes, sir.

Q. Now, after the strike was over, were you ever recalled to work at the Company? A. Well, I went back—went and—we put our picket signs down and all and I went back into the personnel office man and give him my name and address on some paper.

And, he said—he give us a application to fill out and told me if I would bring it back I would be next—you know—on the list—you know—to go back to work if I filled the application out.

So, I took the application and put it in my pocket and never did go back until I got a letter.

[67] Q. From the Company? A. That's right.

Q. Did they tell you whether you would go back as a new man or whether with your old seniority? A. They

told me when I got a letter to come to work that I would come back at the same job and the same pay.

Q. The same job classification and the same rate of pay? A. Yes.

Q. What was your rate of pay? A. When I walked out it was \$1.74.

Q. When you went back, what was it? A. It was \$1.74 until about a week or two afterwards, I got a raise.

Q. And, a raise to what? A. It was—I think it was \$1.80—something.

About three weeks or a month after then—a little before I got hurt—I got my big toe broke—and, it was—I got \$1.89.

Q. You said after you returned to work you were called in and told about a raise.

Were there any other employees with you at the time you were told this? A. No, not at the time it was—you see, Mr. Luke—when I went back, I went back over to Fleco and Mr. Luke Morgan and Mr. Frank—Frank Martin, I think was his name—he talked [68] with me about it.

He asked me did I understand the raise what was given on the bulletin board and I told him I didn't, and he explained it to me.

Q. When you went back to work, did you see any notices on the bulletin board about raises? A. I saw one when I went back that say the Company wasn't allowed to give us a raise.

Q. The Company was not allowed? A. Not allowed to give us a raise.

Q. That was when you first got back? A. When I first got back I saw that, and then about a week or two afterward, they changed and say that they was giving us a raise which would be eight cents.

Q. About when did you get that raise?

they couldn't sleep, so they decided to come down there and talk with us about it.

Q. Do you recall anything else that was said? A. Well, he just told us about the Union and all—you know—heard about we was gonna vote for a union and all what we should do.

He said we could get along better without a union. We should think—you know—towards that, because you know how it was in '58, and we been trying to get unions in there and all.

Q. Now, the strike began on February 28, 1967.
[66] Did you go out on strike? A. I did.

Q. Were you on the day shift or night shift at the time? A. I was on night shift.

Q. When did you go out on strike? A. I went out that night.

The strike started around about 9 o'clock that night, and I came in and punched the clock and went back out.

Q. After that did you get a notice of termination from the Company? A. I did.

It was about a week or two after that that I got it.

Q. After the strike began? A. Yes, sir.

Q. Now, after the strike was over, were you ever recalled to work at the Company? A. Well, I went back—went and—we put our picket signs down and all and I went back into the personnel office man and give him my name and address on some paper.

And, he said—he give us a application to fill out and told me if I would bring it back I would be next—you know—on the list—you know—to go back to work if I filled the application out.

So, I took the application and put it in my pocket and never did go back until I got a letter.

[67] Q. From the Company? A. That's right.

Q. Did they tell you whether you would go back as a new man or whether with your old seniority? A. They

told me when I got a letter to come to work that I would come back at the same job and the same pay.

Q. The same job classification and the same rate of pay? A. Yes.

Q. What was your rate of pay? A. When I walked out it was \$1.74.

Q. When you went back, what was it? A. It was \$1.74 until about a week or two afterwards, I got a raise.

Q. And, a raise to what? A. It was—I think it was \$1.80—something.

About three weeks or a month after then—a little before I got hurt—I got my big toe broke—and, it was—I got \$1.89.

Q. You said after you returned to work you were called in and told about a raise.

Were there any other employees with you at the time you were told this? A. No, not at the time it was—you see, Mr. Luke—when I went back, I went back over to Fleco and Mr. Luke Morgan and Mr. Frank—Frank Martin, I think was his name—he talked [68] with me about it.

He asked me did I understand the raise what was given on the bulletin board and I told him I didn't, and he explained it to me.

Q. When you went back to work, did you see any notices on the bulletin board about raises? A. I saw one when I went back that say the Company wasn't allowed to give us a raise.

Q. The Company was not allowed? A. Not allowed to give us a raise.

Q. That was when you first got back? A. When I first got back I saw that, and then about a week or two afterward, they changed and say that they was giving us a raise which would be eight cents.

Q. About when did you get that raise?

Do you recall that now? A. It was about—I'd say it was about—it was about a month—at least about a month after I went back before I got the eight cents.

Q. And, you started back again about— A. It was September—somewhere along in September when I went back.

Mr. Mattson: No further questions.

Cross-Examination

Q. (By Mr. Bowden) If the Company records reflect that you [69] applied on July 10 and that you were rehired on August 18, would that agree with your recollection—of 1967? A. Yes, sir.

Q. And, you went back at the same rate you left? Is that right? A. Yes.

* * * * *

ALEXANDER BROWN, SR.

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

* * * * *

[70]

Direct Examination

Q. (By Mr. Mattson) Mr. Brown, how long were you employed by Florida Machine and Foundry Company? A. Four and a half years.

Q. What was your job before the strike? A. Before the strike?

Q. Yes, sir. A. I was a furnace helper.

Q. What was your rate of pay? A. \$1.84.

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Q. (By Mr. Mattson) I ask you again if you will think carefully, Mr. Brown, and tell me what your rate of pay was before you went on strike. A. Before I went on strike?

Q. Yes.

How much was it? A. \$1.74.

Q. \$1.74? [71] A. \$1.74.

Q. Thank you.

Now, on what shift were you working on February 28, 1967, the day the strike began? A. On the third shift, the 8 o'clock.

Q. Now, did you continue to work in the plant for a little while after the strike began? A. Yes, I did.

Q. After the strike began, did any Company official or supervisor talk to you— A. Yes, sir.

Q. —that same night? A. Yes.

Q. Who spoke to you? A. Mr. George Peacock.

Q. Where did he talk to you? A. Behind the furnace. He talked to me and Elton Stewart. We was working together.

Q. Were you working at the time he came to you? A. Yes, we was.

Q. What did he say to you? A. He said, "I appreciate y'all staying in here and helping me out and I'm going to give you a dime raise."

Q. And, did you continue working the rest of your shift? [72] A. Yes, I did.

Q. About what time of the night would you say it was that Mr. Peacock spoke to you? A. It was around—it was around 10 o'clock—and—around 10 or 11.

Trial Examiner: Mr. Brown, the Reporter has to hear what you say so try to keep your voice up.

The Witness: Yes, sir.

Q. (By Mr. Mattson) That was Mr. Peacock?

Do you recall whether it was Thomas or George Peacock? Will you think carefully?

You testified that it was George Peacock

Is that correct? A. It was Mr. George—George Peacock.

Q. All right, thank you.

Now, after you finished your shift—did you finish your shift on March 1? A. Yes, I did.

Q. Then, did you go on strike, or did you continue to work? A. I went on strike that morning.

Q. Did you get a letter of termination from the Company after you went on strike? A. Yes, sir.

Q. About when? A. It was about a couple of weeks after I went on strike.

[73] Q. Now, after the strike ceased, did you have occasion to return to work at the plant? A. Yes, sir.

Q. About what month was that? A. September 30th.

Q. Now, when you went back to the plant, you were hired in at what job?

What were you hired in as? A. Same job, furnace helper.

Q. What rate of pay did you start out at? A. \$1.84.

Q. Was that at the beginning, right from the beginning? A. Yes, sir, at the beginning.

Q. Was that 10 cents more than you got before the strike? A. Mr. George Peacock gave me the 10 cents before we left out there.

Q. I see. A. And Mr. Cline say he would give a dime more when I came back in—when I came to work.

Q. I see.

Now, after you were there for a while, were there any other raises? A. No, sir.

Mr. Thomas—Thomas Peacock got the 8 o'clock shift on—over in the production office and told them that he

was giving [74] them a penny too much, and he was—he wasn't axing us to give us his money back because we should have told him and we didn't know a thing about it—

Q. Now, before this, had there been any raises to the group, that you know of? A. No, sir.

Q. You do not know whether any group there got a raise to \$1.93? A. The third shift—the third shift getting 1.93, yes.

Q. Had they received any raises while you were there? A. No, sir, not that I know of.

Q. What are you making now at the plant per hour? A. \$1.92.

Q. Had you been receiving \$1.93 for a while? A. Yes, sir.

Q. And then, I believe you testified that Mr. Peacock called the group into the office— A. Yes.

Q. —and said what to you? A. He said the third shift was getting \$1.93 a hour, but we was on a split shift, and he said he should have reminded us before that we was on the split shift.

Q. So, he reduced your group? A. Yes, reduced.

Q. One cent? [75] A. One cent.

Q. And, you are in the same job classification as before the strike? A. Yes.

Q. The Steelworkers election took place in September of 1966. Were you working at the plant at that time? A. Yes, sir.

Q. Did any official talk to you about that time about the Union? A. Yes, sir.

Q. Who? A. Mr. Tommy Madison.

Q. About how long before or after the election? A. It was about two weeks.

Q. Before the election? A. Before the election.

Q. Where did he talk to you? A. Over in the production office.

Q. Who was with you at the time? A. Just me and Mr. Tommy Madison together.

Q. What did he say? A. He was saying about the union was trying to come in the Company.

Well, he say, "I understand you have five kids—is that right?" [76] And I say, "Yes, I do."

And, he say, "You been employed at this Company, I see, about four years and a half?"

I said, "Yes, sir."

And, he said, he say, "I understand this union is trying to take place in the Company, and we don't want it in our Company, and what do you think about it?"

I said, "Well, Mr. Thomas, right now—I mean—I'm not for the Union."

He said, "Did you ever hear anybody say anything about it?"

I say, "No, I haven't."

And, I think that was about all.

Q. Did he say anything else? A. No, sir, he didn't say anything else.

He just said, "Go back to work," as far as I remember.

Mr. Mattson: No further questions.

Cross-Examination

Q. (By Mr. Bowden) Let me ask you this.

You went out and you reapplied for your job, according to the Company records, on July 13, 1967.

Does that agree with your recollection? A. Yes, sir.

Q. Now, our records show that you were rehired on August 28, 1967, and I believe you testified September, didn't you? [77] A. They sent me a letter on the 30th.

Q. 30th of what? A. 30th of September.

That's when I went back to work.

Q. The record I have indicates that it was August 28, 1967.

You do not accept that date? A. No, sir, the letter was sent——

Q. All right.

* * * * *

Q. (By Mr. Bowden) When you got the 10 cent raise, did anyone else in your group get the raise? A. No, sir, not that I know of.

Q. I mean, you do not know whether they did or not? A. I don't know whether they did or not.

Q. I will ask you if that raise was not an eight cent across the board increase, with a two cent shift differential, making 10 cents?

[78] In other words, they increased your split shift differential to two cents an hour. This is what you get extra for working that shift? A. Yes, sir.

Q. Plus eight cents an hour general increase.

Is that the way it was split, or do you know? A. I don't know.

Q. I see.

You do know that you are now making \$1.92? A. \$1.92.

Q. I see.

Now, do you know whether the third shift gets a higher shift differential than you do?

Do they make more for working at night on the same job that you do? A. The third shift get one cent more than we do.

Q. That is what I mean.

And, originally you had gotten the third shift differential and then he put you back to what? A. Put back to the split shift.

Q. Yes.

When you went back to work, then, did you go back as a furnace helper? A. No, sir, I didn't, I was pouring shank.

Q. Now, did this job carry a higher rate than your old job—[79] pouring shank? A. No, sir.

Q. Same rate? A. Same rate.

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[80] Mr. Mattson: I have a stipulation to propose at the outset here one thing. I did check during the luncheon recess on the dates of applications by strikers for work, as set forth in Appendix A of the Complaint. I notice that my dates go along with information furnished by Mr. Bowden on several names, and if I could get a stipulation on these, we could clear those off.

First, I note a Luther B. Reid. If we could stipulate as to July 10, 1967, as the date of application?

Mr. Bowden: That is what our records show.
We will so stipulate.

Mr. Mattson: Mr. George Loznicka—we would stipulate to May 30, 1967.

Trial Examiner: What was that date for Mr. Loznicka, please?

Mr. Mattson: May 30, 1967.

Actually, that is the date in the Complaint, but the Answer has to this point denied a number of names, including those I am naming now. This stipulation is more or less effecting an admission on some of these dates.

Mr. Bowden: This Mr. Loznicka—we will stipulate that [81] he was directed on that date to apply, but he did not apply, our point being that he went up to someone

and they told him he would have to go to personnel, and he never did go up there.

We contend that is an offer.

Mr. Mattson: All right.

I will skip that one, then, and go to Raymond Miller—Raymond W. Miller. We would stipulate to March 15.

Mr. Bowden: Same situation.

Mr. Mattson: A. Y. Purdy—March 15.

Mr. Bowden: Same situation.

Mr. Mattson: In other words, you are stipulating they came to the plant looking for jobs on those dates, but that they were directed to go to someone else?

Mr. Bowden: I do not know whether they were looking for a job.

We will say that they asked how to apply that day and they were told, and they never did, so we do not say that is a valid request for reinstatement.

Mr. Mattson: Merlin Ponce, March 15.

Mr. Bowden: No, we have an application October 31.

Mr. Mattson: J. E. Sarrells, March 15?

Mr. Bowden: Sarrells applied on April 10 and was rehired on April 11, according to our records.

Trial Examiner: Is it my understanding, Mr. Bowden, with respect to these employees who came to the plant on March 15 [82] that the Company's position is if they wanted to return at that time, they had to go to personnel and make application for employment?

Mr. Bowden: Our position is to have an orderly record, anyone who came was directed to go to personnel and indicate up at personnel—no matter who they asked, and these people, it is my understanding, asked various people—I do not know exactly whether it was the same one.

They were then directed to go to personnel and make application, and they did not.

Trial Examiner: Would they have had to apply as new employees at that time?

Mr. Bowden: I do not know what the policy was at that time, to be frank with you, until I found out whether they had to apply as new employees or not.

Trial Examiner: I take it that these men—perhaps you can tell me, Mr. Mattson—came to the plant, and I presume they would go to their foremen or someone of this sort?

Mr. Mattson: The testimony varies.

They would go either to the foreman or were intercepted in their progress by either Mr. Cline, the personnel man, Mr. Peacock or some official, who said—they indicate that they are there to return to work, and he says, "No, you have been replaced," or, "No, you are terminated," or on occasion, they are told, "You will have to fill in an application as a new [83] man, if you want to start back again."

And afterwards, they would leave—these various types.

Trial Examiner: Do you have any testimony to the contrary?

Could we make this on—perhaps stipulate that this happened?

Mr. Bowden: Well, we will stipulate that they were told they had to go to the personnel office.

Trial Examiner: Well, will you stipulate that they were told they would have to go to personnel—to the personnel office, and if they wished to return, they would have to return as new employees?

Mr. Bowden: I do not know that I could stipulate to that, because I do not know that is true.

Trial Examiner: Well, could you find that out?

Mr. Bowden: Possibly over night we will find out.

Trial Examiner: All right.

Mr. Mattson: General Counsel will call Mr. Joe L. Singleton.

Whereupon,

JOE L. SINGLETON

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

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[84]

Direct Examination

Q. (By Mr. Mattson) Mr. Singleton, how long were you employed by Florida Machine and Foundry Company? A. I went there September the 15th, 1958.

Q. What was your job classification at the time of the strike in 1967? A. A burner.

Q. What was your wage rate? A. 2.36.

Q. There was an election in 1966, in September, involving the Steelworkers.

Were you at the plant working on those days? A. I was.

Q. Around that time, did you have any occasion to talk to any Company official or supervisor concerning union matters? A. I have.

Q. Who? A. Mr. Tommy Madison.

Q. About when did this talk take place? A. Around a week before the election.

Q. Where did it take place? A. Well, it's the old personnel office.

[85] Q. Who was there? A. At that time?

Q. Yes. A. Well, Mr. Madison and I.

Q. Anyone else? A. No one else, just the two of us.

Q. When you went into the office, what was stated?

What was said then? A. Well, when I first went in there, I recall real good that he said, "I know it's hot out there. Come on in and take a little break where it's cool. I want to talk to you."

So, when I got in there, he had my—I guess, something there when I first started to work there, laying on the table, so he said, he stated, "I see you've been here quite a while with us and you haven't give us no trouble."

I say, "That's true."

So, we went on and he explained, he said, "Have you ever been any of the Union meetings?"

I said, "Of course I have, a few"—just like that.

So, he asked me, have I ever been—have I ever been a member for the Union, and I said no. So then, he went and said, "You remember back in '58," which that was the year that I went there, and I said, "Of course."

He said, "Well, it's been a lot of mens there had good jobs, and they went out on strike, lose their home, their [86] automobiles and different things."

So, he told me, Madison said, "It's one thing for sure, if the Union went in, that we'll never sign a contract."

Q. Now, was there any other thing said at that time, that you recall? A. Not that I can recall, off hand.

Q. Did you attend any employee meetings where any officials spoke to the employees? A. Of course I have.

Q. About when did this take place? A. Well, it would have been a week or two before the election.

Q. Was this a meeting of all employees, or some group? A. A group—the whole day shift.

Q. What department. A. It was in the coalroom, behind the furnace.

Q. And, who spoke to the employee there? A. Mr. Russell.

Q. Is that the owner? A. The owner of the plant.

Q. And, do you recall what he said at that time? A. Yes, the first thing he said was that he reminded everybody of the strike in '58. He reminded us of this, and he also went on to say that—if I can recall right—that he wasn't gonna promise us too much, he wasn't gonna promise no more [87] money, but he would promise us a lot of work.

And then, after that, Mr. Thomas Peacock, he had a chart, which there was three blocks, one for the Union, one no union and the other one was for this independent thing that they had going on.

Q. This was at the same meeting? A. Same meeting, yes, of course.

And, so, he said, "If I was one of y'all, this is the way I would vote." He get a pencil and so he marked, made a "X" in this box where it say, "No."

Cross-Examination

Q. (By Mr. Bowden) Was the meeting with Mr. Russell before your meeting with Mr. Madison? A. State that again, please.

Q. I said, was your meeting where Mr. Russell spoke—was that before the meeting with Mr. Madison? A. No, it was after.

Q. I understood you to say that the meeting with Mr. Madison was about a week before the election? A. Of course.

Q. Then, I believe you testified that Mr. Russell—that meeting was a week or two before the election? A. I don't—I didn't state it that way.

Q. What did you say? [88] A. When Mr. Madison spoke at the meeting, Mr. Russell was out of town on vacation or somewhere. He was not there at the time.

Q. I asked you, was your meeting with Mr. Russell prior to your meeting with Mr. Madison? A. I don't understand what you're talking about, now.

Trial Examiner: Was this group meeting at which Mr. Russell spoke, to which Mr. Russell spoke—was it before or after the conversation you had with Mr. Madison?

The Witness: It was after—his meeting was after the meeting was after the meeting we had—I had with Mr. Madison.

Trial Examiner: Mr. Russell spoke to a group of employees on the day shift some time after you spoke to Mr. Madison in his office?

The Witness: Of course.

Q. (By Mr. Bowden) Now then, did I understand you to say on your direct examination that Mr. Madison talked to you a week before the election? A. I said around about a week before the election.

Q. All right.

Now, how long did your conversation with Mr. Madison last? A. It wasn't very long—about 10 or 15 minutes, no longer.

Q. 10 or 15 minutes? A. No longer.

[89] Q. Did you go in and talk in that meeting at all? A. With Mr. Madison?

Q. Yes. A. Of course.

Q. What did you tell Mr. Madison during that meeting? A. At that time, I told him I didn't know anything—I'd never been a member of a union, and I don't know how it goes.

Q. Is that about all you said? A. Of course, that was about all I had to say.

Q. Then, Mr. Madison, the rest of the time, other than that statement—he was talking to you? A. That's right, absolutely.

Q. Now, you mentioned two things that he said.

What else do you recall that he said at that meeting?

A. Who you speaking about now?

Q. Mr. Madison is who we are talking about now. A. Mr. Madison?

Q. Yes. A. Like I say, when I first went there, he said that—he say, if the union—if it win the election, that they still wouldn't sign a contract.

Q. Yes, you mentioned that, but that did not take 14 minutes to say that? A. Well, I understand, but I didn't have a watch to time what time I came out of there.

[90] Q. Well, do you remember anything else that he said, other than that? A. Well, I just—I'm just telling you what they told—what he told me.

Q. What they told you or what he told you? A. What he told me.

Q. Well, he told you a lot of things in 14 minutes, and you only picked out one here to tell us.

I was wondering what else he told you?

Mr. Mattson: I object.

He has already told us—

Trial Examiner: The objection is sustained.

Q. (By Mr. Bowden) Is it your testimony, then, that this is all he said to you? A. That's right, he said if the election—if it won the election, they still wouldn't sign a contract.

Q. Yes, that took about a minute, a—maybe, to say that? A. I don't know, I didn't time it.

Q. Well, I believe you testified that it was about 15 minutes? A. Of course, about 15 minutes—that's all.

Q. You made one statement you have testified about, and then he made this statement, and you do not recall what was said the balance of the time.

Is that right?

Mr. Mattson: I object.

[91] I think the witness has been asked confusing questions, and I do not think he understands the question.

Trial Examiner: I am going to overrule the objection.

Q. (By Mr. Bowden) You do not recall anything else that was said, other than this statement? A. I've went over that once.

Q. I did not ask you that.

I said you do not recall anything else, other than this statement that Mr. Madison made to you? A. No, but I'll go over it again.

Q. You do not need to go over that statement.

I say, do you recall anything else that he said, other than this statement? A. Not that I recall.

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[92] **LUTHER B. REID, JR.**

was called as a witness by and on behalf of the General Counsel [93] and, having been first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Mr. Mattson) What job classification did you hold prior to the strike in 1967? A. I was a helper in the Fleco Corporation.

Q. If you will speak up so the Court Reporter can hear you, please? A. I was a helper in the Fleco Corporation.

Q. What was your rate of pay? A. \$1.74 per hour.

Q. How long had you been employed by the Company? A. I was employed January 19, 1966, up until the time of the strike.

Q. Were you employed there at the time of the Steelworkers election in 1966? A. I was.

Q. Did any Company official talk to you about union matters [94] around that time? A. I spoke to Mr. Tommy Madison.

* * * * *

Q. (By Mr. Mattson) About when did this conversation take place with Mr. Madison? A. I don't rightfully know the time and date.

Q. Before the election? A. It was before the election, maybe a week or two, even a month—I would go that far.

Q. Where did the conversation take place? [95] A. It took place, I think, in the maintenance office—somewhere in that area.

Trial Examiner: A little louder, please.

The Witness: It was in the maintenance office, which is the old personnel office.

Q. (By Mr. Mattson) Was anyone else present during this talk? A. There wasn't.

Q. When you went into the office, what was said? A. Well, when I entered the office, he spoke to me and said, "Hello", and he mentioned—he had my files of employment from the time I came there, and how long that I'd been there, and asked me how did I like the Company.

And, I said, "The Company's all right. I think it's a good Company."

And, he say, "You know that Union is out there, and how do you feel about it—about a union in the Company?"

And, I say, "This is a good Company. I like the Company."

And, he said—he asked me did I know anything about the union, and I said no, I didn't know anything about the union, and, "I don't know anybody that have anything to do with the union."

And he said, "Luther, if you feel strong enough about it you can emphasize this to others."

[96] And so, I didn't give him any answer on that, because I didn't want to say I was a union man, and I asked him if I was a union man—or tell him that I was a union man, I wouldn't have no job—I'd be fired.

Mr. Bowden: Your Honor, I move to strike that.

Trial Examiner: The testimony will be stricken.

Just testify as to what was said to you by Mr. Madison, not what you thought.

The Witness: This is the way the conversation was, Your Honor.

Q. (By Mr. Mattson) If you will continue?

What did he say to you further? Was there anything further? A. (Pause.)

I don't understand.

Q. Did he have anything else to say to you at this time—anything else he was talking about with respect to unions? A. Yes, he went back to the old strike, and that's about all he talked about.

Q. Now, do you recall whether he had any documents or contracts? A. He had documents of a un-union company—one particular union company by the Steelworkers.

Q. What was said about this? A. He showed the wages of these companies was paying, and [97] they—said that they was higher than all the other companies.

Q. Who said this? A. Mr. Madison.

He said only one company, which was a clothes hanger company of some kind—only one company which had a

union that got one to two—a three cent raise from this particular Union. Otherwise (sic), what he said to me, that they had had a union there before, because he knew it was not any good.

Q. Did he mention a number of these other companies at that time? A. Yes, he did.

He mentioned Florida Steel—I think it was C. I. Capps, and a number of other places with the same type of work, mostly—steel industries, and what not.

Q. And, what was the point he was making to you about these companies? A. That they didn't have a union, and otherwise, we didn't need a union.

And otherwise, these companies was not as great as this Company—as far as wages was concerned, he was saying to me that they was higher than others.

Q. Did you go out on strike? A. I did.

Q. On March 1, 1967? A. Yes, sir.

[98] Q. And, did you get any letter of termination from the Company? A. I did.

Q. About when did you get that? A. I can't remember the direct date, but I did receive one a few weeks after—after the strike.

Q. After the strike started? A. That's right.

Q. Were you ever recalled to work by the Company? A. I was not.

Q. Did you have occasion to go to the plant to pick up any checks after the strike started? A. I picked up my payroll check—two, and a credit union check.

Q. Where did you pick these up? At the gate? A. That's right.

Q. From whom? A. Mr. Luke Morgan, which is my supervisor.

Q. About how long after the strike started did this take place? A. Got one on the following Friday and one of the next Friday.

Q. The first Friday—did you get both checks from Luke Morgan? [99] A. I just got one.

Q. What happened on the first Friday? Was anything said to you about your job? A. No.

Q. You just picked up the check? A. That's all.

Q. How about on the second Friday? A. Nothing said then, only thing—this letter. That's where I received this information from.

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[100]

LEPHUS FELTON, SR.

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Mr. Mattson) Prior to the strike, Mr. Felton, what was your job classification and pay rate? A. I was a helper in Fleco Corporation and my pay rate was \$1.74.

Q. How long had you worked for the Company prior to the strike? [101] A. Three years.

Q. I direct your attention to 1966, at which time there was an election involving the Steelworkers.

Did you have any conversation about that time with any foreman in the plant? A. Yes, I did.

Q. What foreman? A. It was the foreman—Luke Morgan, superintendent.

Q. Superintendent of the plant? A. Yes.

Q. About when did this conversation take place? A. I'd say about—three—maybe two weeks before the election.

Q. Now, where did this take place? A. In his office.

Q. Who else was present there? A. Oh, a Edward Green, Norman Wilcox—and—well, we call him Red Skinner—I don't know his first name.

Q. Ray Skinner? A. Yes, we call him Red Skinner.

Q. They were there at the same time? A. Yes.

Q. What did Morgan have to say to you? A. Well, the reason I went in there was about the crane, the outside crane.

[102] We went in there the day before this time and we was complaining about the outside crane, me and the other fellows, so he told us to come back tomorrow, he was too busy, so tomorrow—the next day, I went back and he told me—well, what he did, he called us in two or three at a time, and me—I and this fellow, Green, was the last to go in there, so I was talking about the outside crane.

I told him the reason I came in there was that the crane was dangerous, because we worked directly—I say—directly under the crane and hold up rakes, so he told me that he know the reason I came in there.

So, I asked him, "What do you mean by that?"

And then, he repeat again, he say, "I know the reason you came in here is for the union."

I say, "Well, the union not my concern. I'm concerned about the outside crane."

So, he started talking to us—I say he talked to me about five or ten minutes before he told this fellow, Edward Green, to leave, and then Red Skinner and Norman Wilcox were still there at that time and Red Skinner say a few words, he was telling Luke Morgan that the crane was kind of dangerous.

So, Red Skinner and Wilcox didn't say anything else and Luke Morgan started talking about the crane again—I mean about the union again, so he told me about the union they had in '58—I wasn't there then—he told me about the union they had in [103] '58, and that the union pulled something between the men and the Company and the men lost jobs—lost their jobs by it and so, when they axed to come back, they couldn't take 'em, and he was telling me, he axed me, how did I feel about a union.

So, it wasn't no need for me to lie, because he knew—we had the Independent Union, so I told him, "I think a union is pretty good for job security."

So, he was telling me about—he said—he say he gonna tell me this—before he finished talking about it—he told me if I ever come in there again about the Union that out I'd go, and then he axed me a question about—he axed me about the Union in '58, did I know anything about it, and I told him I didn't.

Q. Did he say anything else? A. Yes, he said something.

He told me that this Union coming in now, this Union trying to come in now—that they'd never get a chance to win, because they wouldn't sign no contract under any circumstances.

And so, I said, I told him, I said, well—so, I axed him, I said, "Isn't this left up to Mr. Russell?"

Now, I don't remember the exact words that went on, but I can go along—I may stumble on some words, but I can go along and tell you—you know—to best of my knowledge.

Q. To the best of your memory. A. So, I axed him, wasn't this left up to Mr. Russell, and [104] he told me, he said, "Yes, it is up to Mr. Russell, but we work under Mr. Russell and we know how he feels."

So, I said, "Well, you have a point there." I say, "Mr. Russell's still the head man—the head man that okay the Union."

So, I tried to get back to the crane—see, what I really went in there was for the crane. This what I wanted to get over—I wasn't thinking of a union at that time—it wasn't even in my mind, so I wanted to get an understanding about this crane—are they going to fix it or what?

So, I kept saying something about the crane and he'd cut me off and start talking about the Union. It didn't make no sense to me—I mean, he could say anything he want about the Union. I'm not—you know—particular about what he talking about the Union.

I just want to get the understanding about the crane.

Q. Thank you.

Did you go out on strike on March 1? A. Yes, I did.

Q. Did you get any letter from the Company notifying you that you were terminated? A. I did.

Q. About how long after the strike started? A. Oh, I believe about two weeks.

Q. After that, have you ever received notice from the Company to return to work? [105] A. No, I didn't.

Cross-Examination

Q. (By Mr. Bowden) Somewhere along the line, you lost me in this conversation you said you had.

Is this Mr. Morgan you are talking about? This what was said to you—is this Mr. Morgan you are talking about? A. Yes, it was.

Q. And, is this one conversation you had two or three weeks before the election?

Did all of this happen at one time? A. Yes, it did.

Q. All right.

Now, as I understand, you testified first that Mr. Morgan asked you how you felt about union, and what did you tell him then? A. Well, I told him I wasn't concerned about a union.

See, he knowed how I felt about the Union in general.

Q. I said what did you say?

What did you say to him, was my question. A. What did I say to him?

Q. Yes, when he asked you how you felt about a union, what did you tell him? A. I disremember right now.

Q. Well, did you tell him you were a member or—
[106] A. I know what you're saying now. Wait a minute, now.

I know what you're saying, now.

No, I didn't tell him I was a member or anything, because, see, he axed me that—how I feel about the union. I just told him, "The union's okay. I feel the union give job security."

Q. I mean, did you tell him—well, what did you tell him—that the Union offered job security?

Is that it? A. I told him that the union was job security—that's it—the union is okay.

Q. That was in answer to his question about the union?
A. Yes.

Q. All right.

Did he ask you at that time—I am undecided as to what you said he asked you next—but, something about:

"Did you know anything about the Union?" A. No, don't get it wrong. I didn't say that.

Q. I have a note where you said that he asked you if you knew anything about the Union.

Now was that asked to you or not? A. Did he ax me did I know anything about the Union?

Q. Yes. A. I don't recall saying that.

Q. Well, let me take this out, because I made a note at the time you were testifying. [107] A. Well, I might of said it, but I don't recall saying it.

Q. You say you might have said it? A. Yes, I might have said that, but I don't recall it.

Q. All right. A. You get kind of nervous when you're up here, and you might—you're liable to say anything, but I'll try to be right with you.

Q. The only thing we want is the truth. A. Yes, that's right.

Q. Now, what happened to Green and Wilcox and this other boy while this conversation was going on?

Were they in there—— A. I told you——

Go ahead.

Q. Were they in there when Mr. Morgan asked you how you felt about the Union? A. No, Green left in five minutes or maybe 10 minutes after we started talking about the outside crane.

Now, Wilcox and Red Skinner was in there, but they never—Red Skinner said a few words about the crane, the condition of the crane and Wilcox didn't say anything.

Q. Were they present when Mr. Morgan asked you how you felt about the Union? A. Wilcox and Red Skinner was there.

Q. Do you know whether they heard what was being said, or not?

[108] Mr. Mattson: I object to this.

Trial Examiner: The witness may answer.

Do you think they heard the conversation between you and Mr. Morgan?

The Witness: Norman Wilcox and Red Skinner, you're speaking of?

Q. (By Mr. Bowden) Yes. A. Unless they had their ears stopped up.

Q. What was that? A. Unless they had their ears stopped up.

Q. They were standing close enough? A. Yes, the office—no further than from about here to there.

(Indicating.)

Q. All right, then.

Then, how did you get into this conversation with Mr. Morgan about what the Company would do or wouldn't do? How did that conversation come up? A. Oh, he was telling me about if the Union—if we vote the Union in at the Company, and the contract, you know, and I sort of told him—I say, “Well, it isn't up to you,” and he said, “No, we—” he used the word, “we”—I axed him, “Well, isn't it up to Mr. Russell?”—

Trial Examiner: Were Mr. Wilcox and Mr. Skinner in there while this conversation was going on?

[109] The Witness: Yes, they were.

Q. (By Mr. Bowden) What did he say about that, again?

What was his conversation to you in that regard? A. What was Luke Morgan conversation?

Q. Mr. Morgan's conversation to you about that. A. Oh, he axed me—no, he told me, he say, “If the union—if we—” he is talking about the people, you know, the employees if we vote the union in, they wasn't gonna agree on any contract or anything like that, so far—so, I told him, “Isn't that up to Mr. Russell?”

Q. Well now, what did he say specifically in that regard?

Do you recall? Recall as best you can exactly what he said. A. He repeated hisself.

Q. Well, what was it?

Trial Examiner: What was it that he said?

Q. (By Mr. Bowden) You have given us your version of what you—of what the gist of the conversation was, and now we want exactly what he said, as best you remember. A. Well, that was the best of my memory right there.

Q. That he said, just like that—— A. He said this—he said that if we vote the union in, that they wasn't gonna agree on any contract or settlement, or anything like that.

So, I told him, I said, I say, "Well, isn't this up to [110] Mr. Russell?"

Q. And, then, what did he say? A. He repeated hisself.

Q. What do you mean, he repeated himself? A. He told me—he repeated—what I mean by repeat hisself—he say that, "We will not agree on any contract or settlement."

Q. I thought you said in your original testimony on direct that he said, "Well, Mr. Russell would make the decision," or something of that sort.

Didn't you testify to that on direct, that when you said, "Wasn't that up to Mr. Russell," that he said, "Well, I guess it is——" A. Yes, sir, yes, he did say that.

He did say it. I remember he did say it.

Q. That is what he said, then, after that, isn't it? A. Yes.

Q. That that was Mr. Russell—it was up to Mr. Russell to make the decision?

Right? A. Now, you're confusing me, now.

You're going—you're confusing me.

* * * * *

[113] Trial Examiner: Before we go any further, it is my understanding—and, correct me if I am wrong—that the Company did not offer a job to a striker after the strike ended, unless he made a personal application.

Is that correct, Mr. Bowden?

Mr. Bowden: That is correct.

Trial Examiner: And, that all strikers rehired after the strike were rehired only as—on the condition that they return as new employees?

[114] Mr. Bowden: That is correct.

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Mr. Bowden: It was only those who had been replaced who were rehired as new employees, you understand.

Trial Examiner: Well, were there strikers then who applied after the strike ended, and were taken back immediately?

Mr. Bowden: Yes.

Trial Examiner: These are not any of the employees listed in Appendix A to the Complaint, then?

Mr. Bowden: I think some of them may be, but the ones who got the notice that they had been replaced and terminated were considered as new employees; the ones who had not been replaced and terminated, when they offered to come back, were then given their jobs back without any condition.

Mr. Mattson: May I ask a question here along this line?

Mr. Bowden: Yes.

Mr. Mattson: For clarifying the issues, in other words, the strikers who were put back to work were put back to work with full seniority and vacation benefits?

Mr. Bowden: If they had not been replaced.

Mr. Mattson: I believe this may be awkward, but a [115] striker then could have been replaced one week; a week later, his replacement gone or put back into another job.

Is this it?

Mr. Bowden: Now, you are going a step removed.

You asked me a question, that if they had—it is our position that we have an economic strike. When they were replaced, they were terminated—if they later came back to work—as a new employee.

If they offered to come to work before they were replaced, they were restored to their full job rights, which I understand to be the law.

Mr. Mattson: What if they had been replaced, but you still put them back, upon their application?

Mr. Bowden: What is your point?

Mr. Mattson: Were many strikers put back to work, even though they had been replaced?

Mr. Bowden: Yes.

Mr. Mattson: Then, they were treated as new employees?

Mr. Bowden: Yes.

Mr. Mattson: Your position is that they were replaced, but there was still an opening for them?

Trial Examiner: Well, Mr. Mattson, perhaps—I take it, then, what the Company's actual procedure was, was that if a striker was replaced, the Company then considered that his employment with the Company had terminated?

[116] Mr. Bowden: That is correct.

Trial Examiner: As a matter of law, and thereafter, whatever the circumstances, if he applied for work, he was offered work if available or when available, as a new employee?

Mr. Bowden: Yes, that is right.

Trial Examiner: But, if he came back and made a request for his job at a time when he had not been replaced,

the Company did not consider that he had been terminated, and he was returned to his job with full rights?

Mr. Bowden: That is correct. .

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HERBERT WRIGHT

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

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[117] Direct Examination

Q. (By Mr. Mattson) What was your job classification and rate of pay, Mr. Wright, before the strike? A. I was a chipper.

My rate of pay was 1.74 an hour.

Q. And, about how long had you worked for the Company prior to the strike? A. 11 years.

Q. Will you speak up, Mr. Wright, so the Court Reporter can get everything you say, please? A. Practically 11 years.

Q. Were you working at the plant during the period around the Steelworkers election of 1966? A. Yes, I was.

Q. Did you have any occasion to talk to any Company official or supervisor about union matters at that time? A. Yes, I did.

Q. Was that before or after the election? A. Before.

Q. About how long before? A. Maybe about two weeks.

[118] Q. To whom did you speak? A. Mr. Thomas Peacock.

Q. And, where did he speak to you? A. In the warehouse office.

Q. Was anyone else present at the time? A. No.

Q. How did you get there?

Were you called in, or what? A. I was called in.

Q. Now, when you went in there, what was said to you by Mr. Peacock, to the best of your memory at this time?

A. Well, to the best of my memory, he showed me my personnel file and the picture they had—the snapshot picture, and he said that my record shows that I was a good worker and didn't get into any trouble, and so he axed me to sit down, so I sat down.

So, he axed me, what did I think about the union, so I told him that I think the union were a good idea because it would—you know, it would help the working conditions and seniority and so forth and so on like that.

And so, he tell me that if the union win, then we wouldn't get a contract because it was a non-union job.

Q. You say it was a non-union job? A. That's right.

He say we were making good money.

[119] Q. Do you recall anything else at this time that he said? A. Well, he didn't say too much at that time. He just—you know—he told me—he told me to get up and leave at that time.

Q. Did you go out on strike March 1, 1967? A. Yes, I did.

Q. Did you get any notice from the Company that you had ever been terminated? A. Well, yes, sir. When I went to pick up my last paycheck, once.

Q. How long after the strike began? A. Be about two weeks.

Q. What happened? A. And then, I got a vacation check, which Mr. George Peacock told me—when I went over to pick up my vacation check, he told me my job had been replaced.

Q. He told you this personally? A. Yes, sir.

Q. Did they ever send you a letter about this? A. No, sir, they didn't.

Q. Did you ever get called back by the Company to your job? A. No, sir.

Mr. Mattson: No further questions.

Cross-Examination

Q. (By Mr. Bowden) How many times did Mr. Peacock talk [120] to you? A. Mr. Peacock?

Q. Yes. A. Which one—Thomas?

Q. Thomas, yes. A. One time.

Q. Once? A. Once.

Q. And, this was prior to the election, as I understand it? A. Yes, sir.

Q. How long did you talk to him at that time? A. It wasn't very long. I don't remember how many minutes, but it wasn't very long.

Q. Well, can you estimate whether it was five minutes or 15 minutes, 20 minutes? Can you give us some idea? A. About five minutes.

Q. Five minutes? A. Yes.

Q. All right. Did Mr. Peacock say anything else to you, other than discuss the union with you at this time? Was there anything else discussed? A. No, sir, he didn't.

Q. And, I believe you testified at that time you told him [121] you were for the union, because it offered seniority, job security and a few things like that? A. Yes, I did.

Q. What did he say when you told him that? A. He just told me to get up and go.

Q. He told you to go? A. Yes.

Q. Well, I believe you testified, if my notes are correct, that when you walked in he told you that you were a

good worker and he asked you what you thought about the union. Right? A. Yes, that's correct.

Q. And, that you then told him that you were for the union because it had seniority and job security? A. That's right.

Q. And, he then immediately told you to go? A. Yes, he told me to leave.

Q. Is that all that was said at that meeting? A. That's all that was said.

Q. You do not recall anything else that was said, other than that? A. Not another word.

Q. Not another word? A. No, sir.

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[122]

GEORGE LOZNICKA

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

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[123]

Direct Examination

Q. (By Mr. Mattson) Mr. Loznicka, how long had you been employed by the Company prior to the strike of 1967? A. A little over five and a half years.

I went to work in June of 1961.

Q. What was your job classification at the time of the strike? A. Machinist.

Q. What was your rate of pay? A. 2.73 an hour.

Q. Did you honor the strike on March 1, 1967? A. Yes.

Q. All right, sir.

After March 1, 1967, did you ever have occasion to go back during the course of the strike to the plant?

A. Well, I went back to get my money—you know, the Friday following, and one other time—I had two days coming.

Q. Now, did you talk to anybody about the work there, or the job there? A. I don't know the date—it was the Friday before May 30th. I called Mr. George Peacock at his home and asked him, did he reckon he had a job down there for me, and he asked me why didn't I come in and talk to himself and Grady Ivey.

He said that Memorial Day was Tuesday and they were taking a holiday Monday, so come in Tuesday afternoon, which I [124] did.

Q. You went to the plant then, on that Tuesday? A. Tuesday afternoon, after work.

Q. And, did you see anybody there, to talk to them? A. Well, I went into the machine shop and I found Grady Ivey, the foreman there—he was outside, and I asked him had George told him I called, and he said yes and he took me over to the main office.

And, Mr. Peacock was busy, someone was in the office, and we waited until he was through, and he asked us to come in.

Q. Was that George Peacock? A. Yes, sir, Mr. George Peacock.

Q. All right.

All right, go ahead. A. I don't remember just exactly what he said to me. He asked me, what could he do for me, or something.

And, I said, well, that I'd called, and I said, "I'm just like all the rest of them," meaning so many—you know—going back to work, and he said he didn't know whether I was like the rest of them or not—you know.

And, there was some other things said—I don't remember about—about my health, or something like that—you know—how y'all—I don't think I—I don't remember exactly.

So, he said that the day the strike started they began their replacement program, and that I'd lost everything I'd [125] built up with the Company, that I'd have to—I—he said a lot of men had already realized that and were back to work with the Company.

He said I must want to work there, because I was back—you know. And so, I was trying to make up my mind what I wanted to do. I told him that I'd discussed this with my father-in-law, and I heard that if you wanted to go back you'd have to go back as a new man, and I told him, Mr. Peacock, now—I told him that I was a new man where I was working, I might as well come back over there and be a new man, because—well—you know—like it'd be more money for me.

Q. More money where?

At the other— A. At Florida Machine.

And, he asked me did I have to give notice and I said no, I'd—I didn't think so because we didn't have much work the time.

And so, he said—he said they had—he had a place for me, and that my rate of pay would be the same as it was before the strike. I got a little bit ahead of myself—then, he asked me did I have to give notice, and I said no, I didn't think so, because we weren't doing much, and I would be in in the morning and I'd probably be late, because I'd have to go by the other place and get my tools.

So then, he told Grady that when I came in in the morning [126] to get me and take me up to Mr. Cline's office and have me fill out a application and be photographed.

And then I went out and they stayed in and discussed I don't know what.

And, on the way home, I decided I didn't want to go back as a new man, and I called a friend of mine that had gone back after the strike and asked him would he carry the message to the foreman that I wouldn't be in,

because—you know—I didn't want to call. I just asked him to carry the message for me.

Q. When you were talking to Mr. Peacock, did he say anything concerning the amount of work available in the plant at that time? A. Yes, they—he said that they had plenty of work and they had a place for me.

Q. After you went on strike did you ever get a letter from the Company? A. No, sir.

Q. Of any sort, saying that you had been terminated? A. No, sir.

Q. Did you say he spoke something to you about your going out on strike or having gone on strike—he said something about this to you? A. Well, I just told him I went out on strike on my own free will.

Q. What did he say about this? [127] A. I told him that I wouldn't go across a picket line out there.

Q. Did he say anything? A. He said—well, he said he had a lot of men doing it every day, but for himself, he couldn't answer that because he wasn't under the same circumstances I was, meaning, I assume, that he was a supervisor and I was an employee.

Mr. Mattson: No further questions.

Cross-Examination

Q. (By Mr. Bowden) Mr. Loznicka, I have one or two questions.

As I understand it, when you first decided that you wanted to return to work, you called Mr. Peacock at home? A. Yes, sir.

Q. And, he told you to come?

This was on a Friday and he told you to come in on Tuesday? A. I called him on Friday night and he said there was—you know—the holiday Monday, would I come in Tuesday afternoon after work.

Q. I see.

And, when you came in on Tuesday, then he offered you a job at your old rate of pay for the following morning? A. That's right.

Q. And then, you reached the determination on your way home that you would not go in and accept the job? [128] Is that right? A. That's right.

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CARL L. HILLYARD

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Mr. Mattson) Mr. Hillyard, what was your job classification and rate of pay at the time of the strike in 1967, please? A. I was a welder, 2.62 an hour.

Q. How long had you been with the Company, approximately? A. I was going on two years.

[129] Q. Did you go out on strike March 1, 1967? A. I did.

Q. Now, after the strike began did you have any occasion to talk to anybody at the Company, any official or supervisor, about returning to work? A. I did.

I went back, to see about my job.

Q. When was the first occasion? A. Oh, I guess it was about three or four weeks after, I guess—something like that.

Q. Whom did you see? A. Mr. Morgan.

Q. Is that Mr. Luke Morgan? A. Yes.

Q. Where did you talk to him? A. Well, I went in to see him—I didn't actually—he wouldn't talk to me.

He talked to Norman Wilcox, told Norman Wilcox what he wanted to tell me.

Q. Who talked to you? A. Norman Wilcox.

Q. What did Wilcox say? A. Wilcox told me that Mr. Morgan said he didn't have nothing for me right then.

Q. Did Morgan talk to you at all himself on that occasion? [130] A. No, sir, we was setting (sic) there at the desk and Norman Wilcox told me what he had to say.

See, he was out in the plant—Norman went out there and told him that I was there, and there was another boy in there applying for a job.

Q. A new applicant? A. Yes, sir.

And, he come back in the office there, and Mr. Morgan come in and sat at his desk, and Norman told me that they didn't have nothing for me right then.

And, I went on out and I went over to the place over there and got a cup of coffee, and messed around a little bit, and I seen this other boy coming out over there, over to the personnel office, and I asked him, I said, "Did they hire you?"

And, he said yes.

So, evidently there must of been—they must have had a opening.

Mr. Bowden: I am going to object to this.

Q. (By Mr. Mattson) Did you talk to this other employee? A. Yes, sir, I talked to him.

Q. Did he say what he was applying for? A. Welder. I asked him.

Q. So, what did you do then?

Did you leave? [131] A. Yes.

Q. When you first went in, though, did you let Luke Morgan or Wilcox know that you were there to look for a job? A. I did.

They knew I was there for it, because I'd done called. I went back two or three times after that, too.

Q. What happened on the next occasion that you went back? A. Well, he told me that I'd have to fill out an application, and I'd have to start as a new man.

Trial Examiner: Who told you this?

The Witness: Mr. Morgan.

Q. (By Mr. Mattson) You saw Mr. Morgan the second time? A. Yes.

Q. How long after the first time was this, about? A. Oh, I guess a couple of weeks.

So, I went ahead and filled out the application, and everything, and took it back to him.

And, he looked it over and kept it and said he'd give me a call whenever they got an opening. So, I waited a while, and he didn't call, so I went back again.

And, he told me, he says—talked to me for a while, and then he took me over to the main office. He said, "Let me see if your job's still open."

He took me over to the main office and went in there and talked to somebody—I don't know who he talked to—I didn't [132] see who he was talking to.

He come back out and he told me to report for work Monday morning. He asked me—I asked him—if I'd have to start as a new man and he said, "Yes."

I said, "Well, all right." And, I said, "Will I get the same pay?"

He said, "I don't know."

And I said, "Well, what you mean, you don't know?"

He said, "I just don't know right yet."

And I said, "Well, you ought to know."

And he said, "Well, I don't know whether you can do the work, yet, or not." He said, "If you can do the work, you'll get the same pay."

And I said, "Well, you ought to know."

Q. Who is this talking—Luke Morgan? A. Mr. Morgan. I told him, in—well, I said, “You ought to know whether I can do the work or not.”

Q. Do you recall about what month this was?

Was it before the strike was over, or after? A. It was after, because I don't believe they was walking the picket line.

Q. On this last occasion, you are talking about? A. The last occasion.

Q. What happened then?

[133] Did you go back to work? A. No, I didn't go back.

He couldn't tell me how much I was going to make, I wasn't going to go back. It might be like some of them other guys, hired in at \$1.60—

Mr. Bowden: Your Honor, I am going to move to strike that.

Mr. Mattson: I think it is relevant.

Trial Examiner: The testimony may stand.

Q. (By Mr. Mattson) Since that date, you have never gotten a letter from the Company? A. No, sir, I haven't gotten nothing from them.

Trial Examiner: I might say, Mr. Bowden, that I am not striking the testimony, whether technically correct or not, but I can assure you that I am not going to give weight to a witness' thoughts about something.

Mr. Bowden: It is clearly hearsay, if somebody—

Trial Examiner: I am not going to give weight to this testimony, but I see no need to interrupt testimony.

We do not have a jury. I hope you can trust me to differentiate what is evidence and what is opinion.

Mr. Bowden: I think we would be remiss, though, if the record did not show—if the record just shows that

we sat here during that type of testimony and did not raise an objection.

[134] Trial Examiner: I understand, Mr. Bowden.

You can make your objection. I will probably overrule most of the time for that reason.

Mr. Mattson: I have no further questions of this witness.

Cross-Examination

Q. (By Mr. Bowden) Mr. Hillyard, will you fix this date when you had your last conversation with Mr. Morgan a little better than you have, in which he told you to report for work on Monday?

When was this? A. Well, I tell you actually, because I didn't keep up with the dates.

Q. Well, what month was it? A. Well, let's see.

(Pause.)

Might have been around in May.

Q. Well, how do you fix it in May?

I asked you, wasn't it in fact possibly the later part of July or early August? A. It could of been.

Like I said, I didn't keep up with the dates on when I went in there.

Trial Examiner: Well, Mr. Hillyard, you testified that this last conversation you had with Mr. Morgan, when you were [135] offered a job as a new employee, occurred after the picketing stopped?

The Witness: Yes, sir, it did.

Trial Examiner: So, this would be, I presume, after July 9?

Mr. Mattson: After July 9, the picketing ceased, that is correct.

The Witness: It could of been.

Q. (By Mr. Bowden) Well, if I tell you that our records indicate that you talked to Mr. Morgan on July 26, would you accept that date—1967? A. July 26?

Q. Yes. A. It could of been.

I talked to him four or five different times.

Q. Well, I am talking about the last time. A. Well, it could of been.

Q. As I understand it, you talked to him before the strike was over and after the strike was over.

Is that correct? A. I did.

Q. Now, when he told you report for work on the following Monday morning, was that as a welder? A. Yes, sir.

Q. And, you say he told you at that time that he did not [136] know what your rate was going to be? A. That's right.

I asked him if my pay would be the same and he said he couldn't tell me—he didn't know.

Q. Well, did he have any conversation with you as to whether or not you might be placed on a better paying job than you had? A. No, sir.

Q. Did—do you recall any conversation of that type? A. No, sir.

They needed setup men then, but I didn't know how to do that, so naturally I couldn't accept that.

Q. You do not know whether that is a better paying job than a welder— A. Yes, sir, it is.

Q. You do not know whether he was considering you for a setup man, and that was what he was talking about? A. I knew he didn't, because he knew I couldn't do it.

Q. Well, you knew you could not do it, then? A. I knew it and he knew it.

Q. All right.

Now, when you left there, then, did you tell him at that time that you would not be there Monday, or did you make this decision not to be there Monday after you left there?

A. Well, after he told me that he didn't know what my pay [137] would be, I didn't tell him I would, I didn't say I wouldn't.

I just said—I just said like this, when I left, “Well, I'll see you.”

Q. Yes.

And, you have never been back since then? A. Yes, I believe I have.

Q. All right.

Now, when was this? A. It was a couple weeks after this.

Q. All right, sir.

What was your purpose for going back? A. But, I didn't go back.

Q. You did not see him? A. I don't recall whether I did or not.

I believe he was gone to lunch and I was on my lunch hour, too, and I didn't have time to wait for him, so I went on back to work.

Q. You do not contend, do you, that you were up there at the time—had made an application at that time, do you? A. Well, I only filled out one application.

Q. Did you receive a letter that you had been replaced on your job? A. I believe I did.

Q. And, was this before you went in to see him the first time? [138] A. Now, that I couldn't tell you.

Q. Have you ever done any kind of work other than weld? A. Yes.

Q. I mean, at the Company out there? A. Oh, at that Company?

Q. Yes. A. No, sir.

Q. That is the only job you have ever held? A. That is the onlyest (sic) one.

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FRANK N. SCANTLING, SR.

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

* * * * *

[139] Direct Examination

Q. (By Mr. Mattson) How long were you employed by Florida Machine and Foundry Company prior to the strike, Mr. Scantling? A. Prior to the strike? A. Yes.

Q. Yes. A. Approximately three and a half years.

Q. What job did you hold prior to the strike? A. Welder's helper.

Q. What rate of pay? A. 1.74 an hour.

Q. Did you go out on strike March 1, 1967? A. Yes, I did.

Q. After the commencement of the strike, after you went out, did you have any occasion to contact any Company official or supervisor about returning to work? A. Yes, I did, on approximately—it was around the 27th of March, I think it was.

A group—three of us, to be exact, went into the personnel office—went into the foundry, to the personnel office—July the 26th—around July the 26th, to apply for my job. That's when I went to apply for the job. The time I was thinking about was about vacation pay.

Q. At the time the strike ceased? A. This was after the strike, when I went to apply for my [140] job.

Q. Did you have any discussions with anyone at the plant about your job before that, though? A. No more than when I went to pick up my last check, I talked to George Peacock on the gate, and he told me I'd been terminated, my position has been filled.

Q. Now, do you recall how long after the strike started that that took place? A. That took place two weeks after the strike, when I picked up my check.

Q. Had you been to the plant before that for any other checks? A. Yes, sir, I did for my vacation pay.

I went back for my vacation pay when I heard they were giving out vacation checks.

Q. How long after the strike was that? A. I think this was about the third week of the strike—second or third week of the strike.

Q. Now, was anything said at that time about your job? A. Yes.

Q. What? A. Not about the job, but about my vacation pay, there was something said.

Q. Well, what was said about that? A. Well, upon entering the plant, we went into the [141] warehouse, the personnel area, and—there was three of us—we went upstairs and there was this lady who was in the office, secretary, I presume, and we told her we was in for our vacation checks.

So, she said, "Do you want employment?"

I said, "No, we don't want employment because we left out here on strike."

So, undoubtedly she must have panicked or something, because she ran down stairs—ran into the main office, and about two minutes later, about five officials came running out of the office back into the warehouse area where we

was.

Q. You said, "we."

There were others—— A. There was three of us.

Q. Who was there? A. Lephus Felton and Bobby Mungin.

And, upon the return, we was upstairs in the personnel office, and Cline came in, he said, "Y'all come on downstairs—y'all come on downstairs. You ain't got no business upstairs."

So, I in return said, "We came to pick up our vacation checks up there."

He said, "You should have waited outside the gate."

I said, "Everybody else been coming inside."

So, he started up the steps and he was using some profane language, along with this other fellow who—I don't know his [142] name, but he came in after the strike. He used to drive a red truck. He was carrying a pistol on his side and he kept—you know—going for his pistol, like—you know—he wanted to do something with it.

So, we came downstairs and George Peacock—Mr. Peacock, he said, "You know, Scantling," he said, "Y'all come down and have a seat over here."

And so, in the process of that, saying a few words—all of us was saying a few words to Cline, because he was making a lot of commotion, as though we came in to do some destructive work in the plant, or something, but we only came in, to receive our vacation pay. Mr. George Peacock had us sit on the side—a small bench away from the personnel office out in the open there, and he told us to wait there, that he'd come back.

But, I didn't have time to wait, because I'd got a message from the gate that my father was seriously ill, and I had to leave right away. I returned later to pick up my vacation pay, which I didn't get.

Q. Did they tell you why you did not get it? A. Well, he say—it didn't make much sense what he said when I came back to pick up my pay at the gate, because he said, "Scantling"—he had a small piece of paper, and on this paper, I guess—looked like he was reading from the paper

—he said, “Your job has been replaced. Your job has been replaced and [143] you have been terminated.”

And, I said, “Well, what about my vacation pay?”

He said, “You won’t receive vacation pay, because you came here at the wrong month.”

And I said, “But, I came—when I came—employment in—on July 17, 1963, the next year I got my vacation check.”

He say, “That’s because you came before September the 1st.”

I got a vacation check the next year, so that’s why I couldn’t understand why I didn’t get one when I went on strike, because I came before September 1st, and they say the only way you get a vacation check is when you come before September 1st, and after the strike I’d get a vacation check because I came after September 1st—that I didn’t understand.

Q. Did they tell you whether you would have gotten a check if you were not on strike? A. No, he didn’t indicate that.

He didn’t indicate anything else—that I’d ever get it.

Q. You never did receive that vacation check? A. I never did receive that vacation check.

Q. Did you get a letter from the Company saying you were terminated? A. Yes, I did, about three weeks after the strike, on March 17.

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[144]

Cross-Examination

Q. (By Mr. Bowden) Let me ask you, you had started talking about a date in July, and then you jumped back and started talking about a date in March, which was right after the strike.

What happened on July 27, I think you said? A. Well, he first asked me did I go back to apply for my job, and

I got confused with the time I went back for my vacation check, because he asked me was anything said, and I was thinking about the time I went back for the vacation check, but I went back to apply for my job after the strike, about a couple of weeks after the strike, which I found out after the strike that you had to apply back—before you could go back and apply for your job, in order to be axcept (sic) whenever the union comes back in.

Q. Well, listen, you lost me somewhere.

As I understand it, you went back one time and got your pay that was due you after you went on strike? A. Right.

Q. And, Mr. Peacock paid you off at the gate at that time, didn't he? A. Right.

Q. Then, you went back there later with two other boys, and you went up to see about your vacation pay? A. That was the third week, they was paying out the vacation checks.

[145] Q. So, that is the time you had to leave, you said, because your father got ill real quick—— A. Yes.

Q. —or suddenly, and then you left and you came back later and talked to Mr. Peacock again? A. The same day.

Q. The same day? A. Same day.

Q. Then, you got into this discussion as to whether you were qualified or not? A. Yes.

Q. Now, when was it?

We have no record of your reapplying for your job? When was it that you reapplied for your job? A. I applied for my job in July, around the 26th or 27 of July.

But, I'd met—is it all right if I call the name—when I met these two fellows, Lephus Felton and Bobby Mungin again on the street, and they was telling me about you had to go back and apply for your job in order to be accept when the union go back in.

We was in the car, Bobby Mungin's car, and they waited for me outside and I went inside the personnel office, and I met Mr. Cline coming down the steps and I asked—I approached him—I say, "I'd like to come back and apply for a job."

[146] And he say—it was close to noontime—"Sorry, we don't have any openings."

And, before I could say anything else, he'd walked on into the office. I didn't get a chance to make myself clear as to whether I was coming back as a new man or not, but he didn't give me a chance anyway, he just said, "Sorry, we don't have any openings," and he walked on into the office.

Q. And, you never went in and had any further discussion with him, or anything? A. Well, when he cut me off like that, say there's no openings—

Q. As a matter of fact, didn't you ask him at that time about you vacation pay again? A. No, I didn't.

Q. You did not mention vacation pay to him— A. Not when I went back for my job.

That was during the strike.

Q. I know that you mentioned during the strike you talked to Peacock, but as a matter of fact, didn't you go back and talk to Mr. Cline at one time, possibly in July, about your vacation pay? A. No, I didn't.

Q. You did not do that? A. No, I didn't not my vacation pay, I didn't.

I only went back one time in July and that was to talk [147] about my job, that's all.

Q. And, you just mentioned that to him in passing? A. I was going to the personnel office and he was coming down, just around noontime—I guess he was going to lunch.

He just said, "I'm sorry, we don't have any openings," and he went on into the office.

Q. What did you do then?

Did you turn around and leave? A. Yes, that was the only thing I could do, I could see to do. I just left.

Q. Were these other two boys with you in July when you went back up there? A. Yes, they was with me.

They didn't go in the plant. They waited for me in the car.

Q. Waited for you in the car? A. Yes, they did.

Q. So, they would not know what happened inside? A. No, they wouldn't.

Q. Is that what you are telling us? A. Yes.

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[148]

ROY MOBLEY

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Mr. Mattson) Mr. Mobley, how long were you employed by Florida Machine and Foundry? A. Approximately 18 years.

Q. What was your job classification and pay rate prior to the strike in 1967? A. I was a molder's helper, getting 1.74 an hour.

Q. Did you go on strike, March 1, 1967? A. I did.

Q. After that, did you have occasion to go back to the plant for any reason, for a check or anything? A. No more than to pick up my pay check.

Q. How long after the strike started was this? [149]
A. Well, I got one the Friday after the strike and the next Friday, the second Friday—the first and second Friday after the strike.

Q. Now, on that first Friday when you went back, what check did you pick up? A. I picked up my regular weekly wages check.

Q. Did you have any other check coming? A. I had a couple of these—plus the credit union check.

Q. From whom did you pick this up? A. Mr. Rhoden—Frazier Rhoden.

Q. Did you make any inquiry about your vacation check? A. No, not then.

Later, I did.

Q. How much later? A. About three weeks later.

Q. What was this inquiry you made? A. Well, I went and axed him, after I found out they was giving out vacation pay—I went to Mr. George Peacocks (sic) and I axed him about my vacation, so he told me that I would receive it in the mail that week.

So, I went on home. Sure enough, I got a letter in the mail, but it was a letter that I was determinated (sic). So, that was on a Friday, when I got the letter, so that next week, I didn't go and talk with him personally—I got on the phone and I called him and axed him about my vacation.

[150] Q. Whom did you call? A. Mr. George Peacocks.

Q. Yes. A. So, he told me, he say, "Wait just a minute," he say, "I will check."

So, he went and he checked, and he come back, and so, he told me, he say, "Roy," he say, "Where you was off, you was laid off 95 days"—I think they had a layoff in '60 or '61—he say, "You was off 95 days," he say, "and

you not eligible for your vacation pay, and you on strike," he say, "But if you had been in the plant working, you'd been eligible for it," which I'd—I was eligible for it—I'd been getting it all the time before.

But after I went out on strike, I wasn't eligible for it.

Q. Did you ever get that vacation check after that?

A. No, I didn't.

Q. Now, after the termination letter from the Company—did ever send you a letter calling you back to work? A. No, they didn't.

Mr. Mattson: No further questions.

Cross-Examination

Q. (By Mr. Bowden) Will you answer this, Mr. Witness?

Do you know whether any other strikers received their vacation pay or not? [151] A. Sure, my brother.

Q. Was he a striker? A. Yes.

Q. And, he got his vacation pay? A. Yes.

Q. Do you know of any others, other than him? A. That's the onliest one I ever talked with.

Q. I see.

So, I understand from your testimony, you never have applied for your job back out there? A. Sure, after—after the strike was over, I went back.

Q. With whom did you talk? A. I went to Mr. Cline—I guess that's the personnel man.

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[152]

EDWARD JACKSON

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

Trial Examiner: Your name is Edward Jackson?

The Witness: Edward Jackson.

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[155]

Cross-Examination

Q. (By Mr. Bowden) Let me get something straight in my mind.

You said you went up and asked Mr. Cline for your job back because you were directed to do this at the union hall? A. Well, no officials told me that. Some of the other employees had been—and they told me—see, I was getting work at the waterfront, and I met some of them up there, and they told me I'd have to go down there, that they would take an application, that they were told [156] they'd have to go back and apply for their old jobs.

Q. All right. Was the picket line up at this time? A. It was up.

Q. And, you were told then at the union hall to go through the picket line and go up and apply for your job while the strike was on? Is that correct? A. That's right.

* * * * *

[159] Q. Now, as I understand it, if it had not been for the fact that you were going back as a new employee, you were up there with the intention of going to work that day? A. Not necessarily so. I wouldn't of went to work anyway.

Q. You would not have? A. I wouldn't of went to work anyway.

Q. Well, what was the purpose of your being up there and asking for your job? A. The purpose of getting on record that I went to see about a job, in case of if the—before they stopped. In other words, before the union was over—the purpose was if—if that—if we win out and the Company sign a contract, that I would have my name up there to be able to get my job back, that I went there and applied for it.

Q. Well, as I understand it, then, what you are telling me is that when you went up there applying for a job, you had no serious intention of going to work at all at that time? A. No, I didn't, not long as they was walking the picket line, I didn't.

Q. Then, after the picket line was over, you never re-applied? A. I never reapplied.

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[160]

JOHNNIE SNEAD

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

* * * * *

Direct Examination

Q. (By Mr. Mattson) How long did you work at Florida Machine and Foundry Company prior to the strike in 1967? A. 12 years.

Q. What was your job classification and pay rate at the time of the strike? A. Bridge crane operator, 2.01 per hour.

Q. Did you go out on strike the first day, March 1? [161] A. I did.

Q. After March 1, did you have any occasion to go back to the plant to see about work? A. I did.

Q. About how many days after March 1, approximately?

A. Approximately nine—I don't know what day it was, but it seemed to me it must have been the 10th. It was a Monday morning—I count nine.

Q. To whom did you go and talk, then? A. Mr. George Peacock.

Q. Will you state what happened when you went to the plant on that occasion.

What was said? A. I went in that morning; I had my lunch and everything, with the intent to go to work.

This was during the strike, while the strike was going on. And, I spoke to Mr. George, told him I came to work——

Q. Mr. George Peacock? A. Mr. George Peacock.

And, Mr. George told me to wait a minute. He in turn went in the main office, where he stayed about 45 minutes—something like that, and I waited on him.

On his return, he told me I had been replaced. And, I said, "I'll be damned, after 12 years?"

And he said, "That's the way it goes."

[162] So——

(Pause.)

Q. Did he say that you could go to work or not? A. He told me I could go upstairs and put in an application and start over as a new man.

And, this is where I said, "I'll be damned."

Q. I see. A. Because I couldn't see that.

Q. Was anyone else in the area, or did anyone else come up to the area about this time? A. Well, it was in the time clock area, and there was quite a few people there.

Well, Mr. Rhoden and quite a few people there, because a lot of people were saying, "Well, we're glad to see you back—come to work," and just a number of people that I knew said they was glad to see me coming back to

work, with the idea that I was gonna be accepted back to work.

Q. Did you hear any conversation about your crane—or, the crane? A. Well, during the time that Mr. George said I was replaced, I told him, “Well, what about my checks?”

I gave him an indication that I wasn’t going to accept the job as a new man, and I said, “Well, what about my checks?” because I hadn’t been down there. I was due three checks.

And, he went in the main office to get them. He said, [163] “Oh.” He went in the main office to get them, and that time, James Mulloy came up, at this particular time, and he axed Mr. George, he say, well, he spoke to me—he say, “You back?”

And, I said, “Yeah, this is—” well, Mr. George was in the office to get my check, and he say, “You back?” he say, “I’m glad to see you,” and this dawned on me, because there’s no love between me and Mulloy.

So, I’m assuming that he was talking about—

Trial Examiner: Let’s do not have your assumptions. What was said?

Q. (By Mr. Mattson) Did he say anything to you—anything about the crane?

Mr. Bowden: This is two employees talking? Is that right?

The Witness: Right.

Mr. Bowden: I am going to object to any conversation between two employees.

Mr. Mattson: I think it is background.

Trial Examiner: The objection is overruled. He may continue.

The Witness: Well, he axed me was I back to work, so I said, "Yeah"—I said, "No."

I said, "He wants me to start back as a new man," and I said, "I'll be damned if I'll start back as a new man. I'll root like a damned hog before I'll start back as a new man."

[164] So, when he done—when he came back—when Mr. George came out with my checks, he said to Mr. George, he said, "Well, whose gonna run the crane?"

Mr. George told him, "Just a minute".

So, Mr. George give me my checks and I went on out the back, started out through the back going towards home, which I always do, and Mr. Rhoden, he axed me, he say, "What happened?"

And I said, "They wanted me to start back as a new man."

He shook his head in dismays (sic). I think a lot of people was——

Mr. Bowden: Your Honor, I am going to object to this, "he thinks", and "a lot of people" and that type——

Q. (By Mr. Mattson) Just say what you saw or heard.
A. Well, anyway, he shook his head—I know he shook his head, because I got two eyes, and I could see he shook his head.

And, he shook his head and I walked on through the plant, going home.

Q. Did you see your crane, by any chance? A. The crane was parked—there was nobody in it.

Trial Examiner: What time of day was this?

The Witness: This was early in the morning, starting time because I had every intention of starting to work.

I was there at 7:30, because I got a ride with some [165] friends of mine that was working—wasn't on strike.

Q. (By Mr. Mattson) Did you ever get a letter from the Company—a letter of termination? A. I got a letter on the 16th.

Q. Was this after or before— A. This was after—I have the letter here.

Q. This was after your talk with— A. After talking with Mr. George.

Q. Did Mr. Peacock give you your vacation check? A. No, he didn't.

Q. Did he say why? A. After I went back—I had to go back several times about something that didn't have anything to do with this—the strike or anything.

But, I went back to get my retirement check, which was \$619 and something cents for the 12 years, and Mr. George said, "Well, you're due a vacation check, don't you?"

I said, "I don't know. Seemingly, I don't".

So, he say, "We'll check." And, he went up to check, and he say, "No, your anniversary date didn't come in right."

This is the procedure—I think—goes with the Company, which I know about. They say that you'll have to take the day you come—you know—like we usually vacation July the 4th, and if you didn't come in prior to July—you know—July 4th, you didn't get a vacation—something like that. [166] And, he said, "Well, you came—" like for instance if he would of came in in March, which I think I came in in April—something like that—if I would of came in in March I would of been entitled to a vacation.

Q. If you had been working in March? A. Right.

Q. How about your retirement?

Did you get notice from the Company to pick up your retirement check? A. The personnel man—he called me.

Q. He said they were giving you a retirement check? A. Right.

We talked—Mr. Peacocks and I—we talked informal about this, which I knew about, and I seen—axed him,

would he think I would get it, and he told me he didn't know.

So, he had—I imagine he had—well, he had the man to call me, one of them—the men—office personnel, that called me and told me I could come down and pick it up, and this I did.

Q. During your work with the Company prior to the strike, did you make contributions to this retirement fund, from your pay? A. Well, it's my understanding that after a person worked there, the insurance—after five years, you are automatically getting this insurance for retirement.

* * * * *

[167]

Cross-Examination

Q. (By Mr. Bowden) How do you account—or, how do you fix the date—we have no record of your reapplying for a job, so I am trying to arrive at how you arrived at the date that you went back to the plant.

Is this just an estimate or a guess on your part? A. No, I'm counting back from the time I received the letter. I received the letter on the 16th.

Q. And, when you say, "counting back," what do you mean? A. Counting back from the 16th.

Well, we—my wife and I—now, when you go to talking about dates, now, how many times do you write down what happened—something like this?

Now, I don't have—

Trial Examiner: Now, Mr. Snead, you said you got a letter about the 16th or 17th?

The Witness: The 16th.

[168] Trial Examiner: Some time before that you went to the plant and asked for your job?

The Witness: I have the letter here—the 16th.

Trial Examiner: All right.

Now, going back to the date you say you applied for your job, you applied for your job before the 16th?

The Witness: Right.

* * * * *

[170]

SYLVESTER GILLYARD

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

* * * * *

Direct Examination

Q. (By Mr. Mattson) Mr. Gillyard, how long did you work [171] for Florida Machine and Foundry Company prior to the strike? A. Almost four years. Going on four years.

Q. What job classification did you have? A. I mostly—mostly just work on the table—I run the roller blaster sometime and I grind some time and finish—clean casting.

Q. Do you recall your rate of pay at the time of the strike? A. \$1.74 an hour.

Q. There was a National Labor Relations Board election back in 1966, involving the Steelworkers.

Now, Mr. Gillyard, were you employed at the plant at that time? A. Yes, sir, I was.

Q. Do you recall whether any foreman or supervisors spoke to you about union matters at that time? A. Well, yes, I remember.

Q. Who? A. That was Wesley Summers.

Q. Anyone else? A. Sandy Jenkins—whatever his name is—he was the foreman of the yard.

Q. Is that Sandy Jamison? A. Jamison, yes, sir,—
(Pause.)

[172] —Mr. George Peacocks, Thomas Peacocks—

Q. I am limiting my question to one conversation that you mentioned about Sandy Jamison. A. Yes.

Q. About when did he talk to you, before the election? A. That was—that was before I was interviewed by Mr. Peacocks.

Q. Was it before the election? A. Yes, way before the election?

Q. Was it a week, or a month, would you say? A. Oh, about a month.

Q. Where did he talk to you? A. In the break area, by the time clock.

Q. Was anybody else present—any other employee when he spoke to you? A. MacArthur Jackson—he was there; Willie Felton, he was there; and a few others.

Q. Did he come out to talk to you, or did he get you together, or what? A. No, he didn't call us together.

He overheard me say something about the union. He heard me say it, and he say we should be ashamed of ourself for what we were trying to do, and I axed him what to be ashamed about.

I say, "You been here forty years dragging your ass. I [173] ain't gonna be here no forty years"—just like that.

Q. What did he say? A. He say Mr. George gonna put a fence all around that place.

Q. What? A. Put a fence all around that place.

Mr. Bowden: Who was this speaking to him?

The Witness: Mr. Sandy Jankins—whatever his name is.

Trial Examiner: Who is he?

The Witness: He's the foreman of the yard. I guess he's still the foreman—I don't know.

I don't know whether he's still there or not.

Q. (By Mr. Mattson) He was the foreman there at that time, then? A. He was then.

I don't know whether he is now or not.

Q. Did he say anything else to them—to you—at that time? A. No, it was 12:30 then, time to go back to work. So, we just walked on our way.

Q. Do you recall whether he said anything about contracts? A. He said Mr. Russell wasn't gonna sign no contracts, he said, "There ain't gonna be no union there."

Q. Did he say this to you? A. He say that directly to me, standing beside the white [174] men's restroom, going back to my job. That's where he told me that at.

Q. Were there any other employees around you at this time? A. MacArthur Jackson.

He and I worked in the same area.

Cross Examination

Q. (By Mr. Bowden) You mentioned—I thought you mentioned people other than Sandy Jamison.

Has all of your testimony been about Sandy Jamison?

A. That's all he axed me about.

Q. I see.

Did you work directly under Sandy Jamison? A. No kind of way.

He be on the yard, I work inside.

Q. And, you say he is a foreman? A. That what he called himself—that what he say he is.

Q. He works—— A. Over at the yard—he got a yard crew——

Q. He has a yard crew?
Is that right? A. That's right.

* * * * *

[175] **ERNEST JENKINS**
was called as a witness by and on behalf of the General
Counsel and, having been first duly sworn, was examined
and testified as follows:

* * * * *

[176] **Direct Examination**

Q. (By Mr. Mattson) How long were you employed, Mr.
Jenkins, by Florida Machine & Foundry Company prior
to the strike of 1967? A. A year and six months.

Trial Examiner: Is Mr. Jenkins going to testify——

Mr. Mattson: Not on 1958—pre-election.

Trial Examiner: All right.

Mr. Mattson: I beg your pardon, Your Honor.

I did not realize that I was breaching a statement of
yours. If I did, it was inadvertent.

I believe I was—I had brought up a new name or a new
situation.

Trial Examiner: Well, if this has to do with the matters
before bargaining began?

Mr. Mattson: This is now on the strike——

Trial Examiner: On the strike?

Mr. Mattson: ——applications.

Q. (By Mr. Mattson) What was your job classification
and pay rate before the strike? A. I was a molder's helper,
\$1.69 an hour.

* * * * *

[177] Q. (By Mr. Mattson) Did you go out on strike on March 1, 1967? A. That's right.

Q. After that, did you have any occasion to go back to the plant, to seek employment? A. I went before the strike was over.

Q. Before the strike was over? A. Yes.

Q. Do you recall about how long after the strike started that this would have been? A. About four weeks.

Q. Whom did you see? A. Mr. George Peacock.

Q. Where did you see him? A. In the personnel office.

Q. Was anyone else there at the time? A. Not in the area we was in.

We was in the office and he was sitting down in the office when I walked in.

Q. Were any other employees or strikers with you at the [178] time? A. No, sir.

Q. What did you tell him? A. I axed him could I get my job back, and he told me I'd have to start over as a new man, but he didn't need nobody right now.

He say he would call me when he needed me.

Q. Did he say anything about the rate of pay or anything? A. No.

Q. Did you sign any paper for him? A. No, sir.

Q. After that, did you ever make another application for work? A. No, sir.

Mr. Mattson: No further questions.

Cross-Examination

Q. (By Mr. Bowden) Prior to the time you went up to talk to Mr. Peacock, had you received a paper saying that you had been replaced? A. No, I received one after.

Q. What? A. I received one after he told me.

Q. How long after this? A. About three weeks.

Q. About three weeks? [179] A. Yes.

Q. When did you say you were up to see him? A. About three weeks—about four weeks after the strike started.

Q. After the strike was over or commenced, did you say? A. Started—about four weeks.

Q. All right.

Four weeks after the strike? A. That's right.

Q. All right.

Did he tell you at that time that you had been replaced?
A. At that time I went back in, no.

Q. He did not? A. No.

* * * * *

J. E. SARRELLS

was called as a witness by and on behalf of the General [180] Counsel and, having been first duly sworn, was examined and testified as follows:

* * * * *

Direct Examination

Q. (By Mr. Mattson) Mr. Sarrells, how long were you employed by Florida Machine & Foundry prior to the strike? A. 18 years and four days.

Q. What was your job classification and pay rate before the strike? A. Setup—I made 2.72 an hour—or 2.73, I believe it was.

Q. Now, did you honor the strike on March 1, 1967? A. Yes, I did.

Q. After that date, did there come a time when you went back to seek a job? A. I did.

Q. About how long after March 1, 1967? A. Two weeks, to the day.

[177] Q. (By Mr. Mattson) Did you go out on strike on March 1, 1967? A. That's right.

Q. After that, did you have any occasion to go back to the plant, to seek employment? A. I went before the strike was over.

Q. Before the strike was over? A. Yes.

Q. Do you recall about how long after the strike started that this would have been? A. About four weeks.

Q. Whom did you see? A. Mr. George Peacock.

Q. Where did you see him? A. In the personnel office.

Q. Was anyone else there at the time? A. Not in the area we was in.

We was in the office and he was sitting down in the office when I walked in.

Q. Were any other employees or strikers with you at the [178] time? A. No, sir.

Q. What did you tell him? A. I axed him could I get my job back, and he told me I'd have to start over as a new man, but he didn't need nobody right now.

He say he would call me when he needed me.

Q. Did he say anything about the rate of pay or anything? A. No.

Q. Did you sign any paper for him? A. No, sir.

Q. After that, did you ever make another application for work? A. No, sir.

Mr. Mattson: No further questions.

Cross-Examination

Q. (By Mr. Bowden) Prior to the time you went up to talk to Mr. Peacock, had you received a paper saying that you had been replaced? A. No, I received one after.

Q. What? A. I received one after he told me.

Q. How long after this? A. About three weeks.

Q. About three weeks? [179] A. Yes.

Q. When did you say you were up to see him? A. About three weeks—about four weeks after the strike started.

Q. After the strike was over or commenced, did you say? A. Started—about four weeks.

Q. All right.

Four weeks after the strike? A. That's right.

Q. All right.

Did he tell you at that time that you had been replaced?

A. At that time I went back in, no.

Q. He did not? A. No.

* * * * *

J. E. SARRELLS

was called as a witness by and on behalf of the General [180] Counsel and, having been first duly sworn, was examined and testified as follows:

* * * * *

Direct Examination

Q. (By Mr. Mattson) Mr. Sarrells, how long were you employed by Florida Machine & Foundry prior to the strike? A. 18 years and four days.

Q. What was your job classification and pay rate before the strike? A. Setup—I made 2.72 an hour—or 2.73, I believe it was.

Q. Now, did you honor the strike on March 1, 1967? A. Yes, I did.

Q. After that date, did there come a time when you went back to seek a job? A. I did.

Q. About how long after March 1, 1967? A. Two weeks, to the day.

Q. Whom did you see? [181] A. I saw Luke Morgan.

Q. Where did you see him? A. In the time clock area.

Q. Were there any other employees or strikers there seeking jobs at the same time? A. Yes.

Q. Who? A. Merlin Ponce.

Q. Is that Ponce—P-o-n-c-e? A. Right.

Q. All right.

Go ahead. A. Raymond Miller, Ralph Hodges and myself.

Q. Now, were you all there talking to Morgan? A. Right.

Q. What did anybody say?

Did anybody indicate whether or not they wanted to go to work? A. Yes, that was the purpose of going in.

Q. Who said that you had come for work— A. Well—

Q. —if anyone did? A. Well, we all did.

Q. To whom did you tell this? A. Luke Morgan.

[182] Q. What did he say? A. Well, he said we'd been replaced.

Q. Did he say anything more about this? A. But, if we'd fill out an application, they had work for us to do—hire back in as a new man.

Q. Did anybody ask him what this would mean? A. Yes.

Q. Who asked the question?

Do you remember? A. I think Hodges did.

Q. What did Morgan say, if anything? A. He said there wasn't anything he could do about it.

Q. Did he say anything else about this, explain this in any way? A. No.

Trial Examiner: Mr. Sarrells, I must make sure I have your testimony correctly.

Did Mr. Morgan say to you that you could come back then as new employees, or was this—

The Witness: If we would fill out an application—fill out a new application and start back in as a new man.

Trial Examiner: Did he say he had work for you at that time?

The Witness: No.

Maybe I got ahead of myself here.

[183] Trial Examiner: All right.

Anyway, he said that if you came back you would have to come back as new employees?

The Witness: Everett Cline, the one that—he got me by the shirt and said, “Come on upstairs, boy, and fill out an application and let’s go on back to work.”

Trial Examiner: All right.

The Witness: Luke took us in the maintenance office and talked to all four of us together, and I can’t remember all that was said because everybody was trying to talk at one time.

Q. (By Mr. Mattson) Just for clarification of the record, Mr. Sarrells, did you talk to Mr. Cline first?

Where did this conversation— A. No, no.

No, we talked to Cline after we talked to Mr. Morgan.

Q. All right.

After Mr. Morgan, then—well, how did you leave that and go to the next stage? A. Well, Cline tried to talk us into going back upstairs and filling out applications to go back to work, but which we told him no, if we changed our mind we would—we would come back, which I did six weeks later.

Q. Is your testimony now that he was trying to talk you into going to work then? [184] A. Well, he didn’t try to talk us into going to work—

Q. What were the words he used? A. He told us we could go back to work if we filled out the applications.

Q. All right.

Now, were you in a group also when you talked to Cline? A. Yes.

Q. The same people you named before—Merlin Ponce, Raymond Miller and Ralph Hodges? A. Uh-huh.

Trial Examiner: Your answer is yes?

The Witness: Right.

Q. (By Mr. Mattson) Did you say you changed your mind about six weeks later, or so, and did go back? A. Yes.

Q. Did you go back as a new man? A. Right.

Q. With loss of seniority and vacation time? A. Right.

Q. Your answer is right? A. Right, I did.

Q. Did you go back on the same pay scale? A. Yes.

Q. After you were there, were there any increases in pay? [185] A. Later on—I believe it was October, they come up with eight cent a hour across the board.

Q. Was that for all employees? A. Yes.

Q. Was there a notice on the bulletin board? A. Yes.

Mr. Mattson: No further questions.

Cross-Examination

Q. (By Mr. Bowden) Mr. Sarrells, did Mr. Ponce, Mr. Miller and Mr. Hodges, go back with you when you returned six weeks later and went to work? A. No.

Q. They did not? A. No.

Q. Do you know whether they had gone back ahead of you or what their status is? A. They haven't gone back.

Q. They have not gone back? A. No.

Q. But, at the time you were in talking to Mr. Morgan, he told you at that time that you had been replaced.

Is that correct? A. Right.

Q. Had you received a letter at that time that you had been replaced? [186] A. Later.

Q. Later? A. A couple or three days later.

Q. A couple or three days later? A. Yes.

Q. All right.

Now, you said that you were in that office what—about two weeks after the strike started?

Is that your testimony? A. Two weeks to the day.

Q. To the day? A. Right.

Q. Well, were you in there picking up your check, or something, or did you make a special trip to go in there?

A. No, all four of us made a special trip in there to go to work.

Q. In the first week, you had to go by and get your week's check, didn't you? A. Yes, on Friday afternoon.

Q. Then, the second week you went back to get the balance of your check.

Right? A. Right.

Q. Well, when you applied, was that before or after the second time you went in there, to get your second check? [187] A. (Pause.)

No, that was after we picked up—yes, the second check, right.

Q. In other words, you applied after you picked up your second check? A. Right.

Q. Was it the following week?

If you picked it up on Friday, then it must have been the following week? A. The following Wednesday morning.

Q. The following Wednesday morning, after your second—the pickup of your second check? A. Right.

Q. All right.

Now, at that time, Mr. Cline suggested to you, after you talked to Mr. Morgan, that you fill out an application and—— A. Right.

Q. ——and go to work? A. Right.

Q. And, was that to go to work immediately? A. That's the way I took it.

Q. I see, meaning that there was a job available for you at that time, to go to work? A. Yes.

[188] Q. And, the four of you—then, you were together? A. No, let's leave the other three off.

He was talking to me personally.

Q. I see.

Were they with you? A. Yes—no, they was—we'd started back out, but they was walking up behind me when he reached over and got me on the arm and——

Q. Did you ever go up to his office? A. Oh, yes.

Q. At that time, I mean? A. No.

Q. You went up there later? A. Six weeks later.

Q. Six weeks later? A. Yes.

Q. And at that time, when he made the statement to you, you declined? A. I hesitated and waited, yes.

Q. I see.

Mr. Bowden: No further questions.

Redirect Examination

Q. (By Mr. Mattson) When you went back six weeks later, was that as a setup man? A. Yes.

[189] Q. When you were given these checks, you were not paid off your pension check or your retirement check? A. No, not then.

Q. They held it back? A. Yes.

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ALONZO HARRIS

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

• • • • •

Direct Examination

Q. (By Mr. Mattson) Mr. Harris, how long had you [190] worked at Florida Machine & Foundry Company prior to the strike? A. 28 and a half years.

Q. What job title did you have? A. I was a ladle tender, and I'd rebuild ladles.

Q. Rebuild ladles? A. Yes, sir, repair and rebuild ladles straight out, repair ladles, set them up, heat them and put them in the pit and slag them off and pour steel.

Q. At the time you were laid off, was your pay rate \$1.74 an hour? A. 1.74 an hour, including—I worked at night, and the night man, he's supposed to get an eight cent premium, and that eight cent premium was included in that \$1.74 an hour.

Q. Now, Mr. Harris, the Steelworkers strike commenced on the night of February 28, 1967.

Did you go out on strike? A. Yes, sir.

Q. After you went out on strike, did you have any occasion to talk to Mr. George Peacock? A. Not until after we went out on strike.

Q. After you were on strike? A. Not until the 10th of March.

Q. And, where did you see him? A. At the gate, at the—at the fence in front of the [191] office.

Q. Was there a gate there? A. Yes, sir, the gate was closed.

Q. Was he passing out checks at that time? A. Yes, he was passing out checks at that time.

Q. What did he say to you? A. He—he passed out the checks, but he passed the check to this fellow here and he gave it to me.

And then, he called me to him—Mr. George Peacocks and this other man standing there—I never could think of his name—but anyway, he called me to him and told me, he say, “Al, ‘he says,’ you been terminated and you have been—your job has been replaced.”

And, I said to him, I said, “Well, what about my vacation pay?”

He say, “You started to work with the Company on the 10th of August in 1938, and you got your vacation pay last year.” He said, “You’re not entitled to a vacation pay this year.”

I said, “I started with the Company on the 10th of August in 1938, and I worked five years straight and didn’t get a vacation.” I said, “First vacation I got from the Company was the first week in September, 1943.”

That’s the way I told him. He say, “Well, that’s the date you started to work and you are not entitled to a [192] vacation. You got your vacation check—pay last summer and you’re not entitled to vacation pay this year,” which is up to the 28th of February, when we come out.

And, I told him, “Thank you.”

Q. After that, did you get any letter from the Company? A. Yes, I got a letter from the Company, it was either on the 17th or the 18th of March.

Q. Did that letter tell you you were terminated? A. Yes, that letter going into the same words he spoke to me on the 10th of March.

Q. In the checks they paid you, did they pay you your pension money? A. Well now, not at that time.

Along about—oh, along about, I think, on the—on the 26th—about the 26th, 27th of May, I have a letter from the office, concerning my retirement pension fund, and so I went down—I went down on the 29th that day, but the office was closed, and so I went back—the office was closed because the 30th of May they closed, but they took the 29th there, for the 30th, and then, I went back then, I believe it was on the—

Mr. Bowden: Your Honor, I am going to object.
I do not know what he is after.

The Witness: —on the 31st, and I went in the office, and so—

[193] Trial Examiner: We will let the witness finish the answer.

The Witness: —he—this insurance man—was over the insurance—fact is, I didn't even know he was there, until—

Trial Examiner: Well, Mr. Harris, did you get your pension money later?

The Witness: Yes, on that—I didn't get it the first day.

Trial Examiner: You did get it?

The Witness: Yes, I did get it.

Mr. Mattson: Thank you.

Q. (By Mr. Mattson) Now, did you go back to the plant after the strike ended, to apply for your job? A. Yes, sir.

Q. And, to whom did you talk—Mr. Cline? A. Beg pardon?

Q. Whom did you talk to? A. I talked to the man that do the hiring up there in the personnel office—I forget his name.

But, he say he was the one who do the hiring.

Q. What did he say to you? A. He axed me—first thing he axed me, he say, “How long was you with the company?”

I told him I worked with the company 28 and a half [194] years, and so he picked up a sheet of paper and handed it to me, and he say, “You fill out your application for a new job and when we need you, we’ll call you.”

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RAYMOND W. MILLER

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

• • • • •

[195] **Direct Examination**

Q. (By Mr. Mattson) How long were you employed by Florida Machine & Foundry Company prior to the strike, Mr. Miller? A. 17 years, or a little better.

Q. What was your job classification and pay rate at the time of the strike? A. I was a welder, and my pay was 2.62 an hour.

Q. Did you go out on strike on March 1, 1967? A. Yes, sir, I did.

Q. After that, did you have any occasion to go back to the plant? A. About two weeks after the strike, there was me and three more welders that went back to go to work.

Q. To seek work? A. Yes, sir.

Q. Who were the others? A. Ralph Hodges, Sarrells and Merlin Ponce.

Q. Did you go to the plant and talk to someone there? A. Yes, sir, we went into the plant there at the time clock area.

We had a talk with Luke Morgan.

Q. What did you tell Luke Morgan? A. That we'd come back to work, if our job was still open.

[196] Q. What were you told? A. He told us our jobs had been replaced.

Q. Did he say anything else? A. Only that—for us to fill out a new application and come back as new men. But, he didn't say that there was a job open for us.

Q. All right. Did you fill out an application that day? A. No, sir, I didn't. I didn't even ask for one.

Q. Did you fill one out at any later date? A. No, sir.

Q. Has the Company ever sent you a notice of termination of employment? A. Yes, sir, they did, a week or so after we was over there and applied for a job.

Q. Have you ever been called back to work by the Company? A. No, sir.

Mr. Mattson: No further questions.

Cross-Examination

Q. (By Mr. Bowden) Mr. Miller, what is the date of that notice you got from the company? A. I couldn't say, sir. It was—it was in March, sometime.

Q. If I told you that it was March 16, would you accept [197] that date?

Mr. Mattson: I object to this.

Trial Examiner: Well, the record shows, Mr. Miller—the Complaint alleges that the Company admits that it sent out letters to all employee strikers on March 16, and you would have received a letter—you did get a letter?

The Witness: I did receive it.

Trial Examiner: It would be around this time.

Mr. Bowden: All right.

Q. (By Mr. Bowden) Then, I will ask you this. The strike was March 1, wasn't it? A. That I don't know. I don't remember.

Q. Well, how long—assuming that the strike was March 1, when, then, did you go to see Mr. Luke Morgan? A. That was in the neighborhood of two weeks after the strike was declared.

Q. All right, sir. So then, you are talking about around March 15 or 16, yourself, aren't you? A. In that general area.

Q. What day of the week, if you recall? A. I couldn't recall that, sir.

Q. Do you recall whether it was after you received your last paycheck, or not? A. Yes, sir, it was after.

[198] Q. It was after that time? A. Yes.

Q. And, you received this—I understand you received one pay check the first week, and the second week you received another pay check, and this was after that period. Is that right? A. It could've been in that neighborhood.

Q. Well, do you think it was sometime then in the week following the time you got your last pay check, or was it further than that from the time you received your last pay check? Could it have been more than the following week after you received the last check? A. It could've been a week or two after.

Q. A week or two after you received the last check? Is that correct? A. Yes.

Q. It could've been? You do not know? A. That's right.

Q. Now, did Mr. Morgan tell you at that time to go up to the personnel office and talk to Mr. Cline? A. No, he didn't tell me exactly to go up there and see him. He said, "Fill out a new application."

[199] Q. Did he tell you you would have to get them from Mr. Cline? A. I don't remember whether he said I'd get them from him or not.

But, he said we had to fill out a new application.

Q. As a matter of fact, Mr. Cline was down there, wasn't he? A. Not at that time.

Q. Well, I mean he came in before you left, didn't he? A. Not where we was holding the conversation, he didn't.

Q. I know it, but before you left the premises, didn't he actually talk to Mr. Sarrells?

Sarrells was with you, wasn't he? A. He was talking.

Q. Yes.

That was before you left, wasn't it? A. Yes, it was.

Q. And, so you did see Mr. Cline, then, before you left? A. Yes, but I didn't speak to him.

Q. Now, did you hear Mr. Cline make any statement either to Mr. Sarrells or to yourself about filling out an application? A. No, sir, I didn't.

Q. Did you hear anybody say that there was work available for you if you would apply as new employees? [200] A. No, they didn't tell me there was work available.

Q. I see.

And, you never came back in again? A. No, sir.

Q. That was the one and only time you were ever in there? A. I came back one time to pick up my retirement check.

Q. Yes.

But, you did not talk to anybody about a job at that time? A. No, sir, I didn't.

* * * * *

Redirect Examination

Q. (By Mr. Mattson) Mr. Miller, did you see Mr. Cline talking to Mr. Sarrells? A. They were together talking, but——

Trial Examiner: Mr. Miller did so testify——

Mr. Mattson: I think he is answering the rest of it, sir.

Q. (By Mr. Mattson) But what? A. They were talking about what I don't know—I walked on by and was coming out the warehouse—what their conversation was. I didn't hear none of it.

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[201]

EUGENE WAYE

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Mr. Mattson) Mr. Waye, how long were you employed by Florida Machine & Foundry Company prior to the strike? A. February 20, it was exactly 25 months.

Trial Examiner: 25 months?

The Witness: Yes.

Q. (By Mr. Mattson) What was your job classification? A. Welder.

[202] Q. What was your rate of pay? A. 2.62.

Q. Did you go out on strike on March 1, 1967? A. I went on strike on February 28th, that night.

Q. That night? A. Yes.

Q. After that, did you have any occasion to return to the plant? A. Yes, sir, about six or seven weeks later.

Q. And, why did you go to the plant on that occasion?

A. Well, to see about getting my job back.

Q. Did you talk to anyone on that occasion? A. Mr. Luke Morgan.

Q. Was anyone else present? A. Mr. Wilcox and—he was going back and to, you know, and he didn't listen to the conversation.

Q. But, you talked to Mr. Luke Morgan alone? A. Yes.

Q. What did you tell Luke Morgan and what did he say to you? A. Well, I told Mr. Luke that I'd like to see if I could get my job back.

And, he told me, "All right," he said, "You'll have to go up there and fill out an application—see Mr. Cline and fill out an application." He said, "When you fill out your [203] application, bring it back to me."

So I went and filled it out and brought it back to him, and he looked it over, and he said, "Well," he said, "We don't have an opening right now, but as soon as we have an opening, we'll let you know."

And, that's what he did. A week later he sent one of the employees over to my house and he told me to call him. I called him, and he said he had an opening.

Q. What kind of job opening did he have? A. Same thing that I had done when I left.

I was cabguard welder—cabguard fits over these bulldozers and heavy equipment.

Q. And, at what rate did you return—the same rate or more? A. Same thing, 2.62.

Q. After that, were there any increases in wage rates? A. Yes.

Q. What? A. We got an eight cent raise and two cent night differential.

Q. About when did that occur? A. Around—around October last year—I think it was October.

Q. After you went back to work, did you observe whether any new welders were hired? [204] A. Well, I guess there was a few coming and going.

A lot of them was from out of town, you know—work a while, and then quit—some go to California, some go to Cleveland—they just come in and out—wasn't looking for nothing steady.

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MERLIN A. PONCE

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

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[205]

Direct Examination

Q. (By Mr. Mattson) How long were you employed at Florida Machine & Foundry Company prior to the strike, Mr. Ponce? A. I went to work there the 21st day of July, 1951.

Q. What was your job classification and pay rate at the time of the strike? A. I was a setup man at 2.73.

Q. Did you go out on strike? A. Yes, sir.

Q. What day? A. The first day of March.

Q. 1967? A. Right.

Q. After that, did there ever come an occasion when you went back to the plant? A. I went back with Miller, Hodges and Sarrells.

Q. What was the purpose of that visit? A. Well, we all went to go back to work.

Q. Did you talk to anyone there? A. Yes, I talked to Luke Morgan.

Q. Did you tell him what you wanted? [206] A. Yes.

Q. What did you say? A. He said that our place had been taken—our jobs had been taken, but we could fill out an application, but he didn't say whether we could go to work right then or not.

Q. Did you fill out any application? A. No, sir, I didn't.

Q. Did he say what the application would mean? A. He said we'd have to start back as a new man.

Q. After that, did you ever make another application of your own for re-employment? A. Yes, sir, I did.

Q. About when? A. I believe it was in October.

Q. Of 1967?

That was after the strike had ceased? A. Yes.

Q. Whom did you see on that occasion? A. I was called by Norman Wilcox at the house, and he told me to come in and fill out an application.

So, I went in and saw Mr. Cline, and he sent me to Dr. Baker, and he asked what I was supposed to do, and I told him I was supposed to be hired as a setup man, and he said, "At the same rate of pay?"

And, I said, "Yes."

[207] So, he called Norman Wilcox and verified the fact.

Q. Then what happened? A. I worked two hours and quit.

Q. Did you go back with seniority and vacation rights? A. No, new man.

Q. The same rate? A. No, it was eight cents more, I think—he said—it was 2.81, I believe it was.

They got an eight cent automatic raise.

Mr. Mattson: No further questions.

Cross-Examination

Q. (By Mr. Bowden) Mr. Ponce, you said you went back with Miller, Hodges and Sarrells.

When was this? A. The 15th day of March.

Q. Had you at that time received your letter from the Company? A. No, sir.

Q. Was this after you got your second pay check? A. I believe so.

I believe I'd got all my pay then.

Q. All right, sir.

Then, this was either the following week or the week after that, before you went back with this group? A. Let's see, I went out and met George Peacock at the [208] gate, and he give me my time, what I had coming.

Q. Was this the first week or the second week? A. I don't remember whether he gave both checks at once, or what.

Q. How many times did you go and get your check? A. One time.

Q. I see.

So, you did not go then the first week and get your full week's check, did you? A. I don't believe I did.

It's been so long.

Q. You went back the second week and got both checks? A. I think that's what I done.

Q. Then, your application, when you saw Mr. Morgan, was sometime after that.

Is that correct? A. Let's see—I don't remember.

I know it was on the 15th, though.

Q. Well, we are trying to establish whether it was or was not on the 15th by fixing these other events, that you do remember, in your mind.

Was it in the week following the time when you saw Mr. George and got both checks?

Was it in the week following that, do you think? A. I don't remember that.

[209] Q. Well, what day of the week was it, if you remember that? A. It was on a Wednesday.

Q. All right.

So, if you got your check on a Friday, then it was the the following Wednesday?

Is that your testimony? A. I believe so.

Q. All right.

Did you talk to anyone while you were in there talking to Morgan?

Did you talk to Cline at all at that time? A. No, sir.

Q. You did not? A. No, sir.

Q. Did you hear any of his conversation with Mr. Sarrells? A. No, sir.

Q. You did not? A. No.

Q. Did you have any conversation with Mr. Sarrells after you left there, in reference to his conversation with Cline? A. No, sir, I don't believe so.

Q. He did not say anything to you about it? A. No, sir.

Q. I see.

[210] Then, the next time that you went back in reference to a job was as a result of a call from Mr. Wilcox? A. Right.

Q. And, at that time, after having completed the formalities, you went back to your old job, your setup job? A. That's right.

Q. And, at the same rate, with the addition that there had been an increase of eight cents per hour? A. Right.

Q. Now, was that a permanent job, so far as you know? A. I couldn't tell you.

Q. Well, was that your understanding, that it was permanent? A. Well, I thought it was.

Q. Yes, sir.

Then, after working two hours, you quit.

Is that your testimony? A. Yes.

Mr. Bowden: All right, sir.

Redirect Examination

Q. (By Mr. Mattson) Why did you quit? A. Working conditions were a whole lot worse when I went back.

* * * * *

[215]

CHARLES A. MARTIN

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

* * * * *

Direct Examination

Q. (By Mr. Mattson) Mr. Martin, how long were you employed by Florida Machine & Foundry Company prior to the strike of [216] 1967? A. Approximately nine years, sir.

Q. What was your job classification at that time, Mr. Martin? A. Steel molder.

Q. Do you recall your rate of pay before the strike? A. Two-sixty-something an hour. I wouldn't know the exact figure right now.

Q. All right, sir.

Now, were you—did you go out on strike on March 1, 1967? A. Well, when I came down that morning to go to work, there was a picket line, and I didn't cross the line.

Q. Now, after that date of March 1, 1967, did there come any time when you wanted to check for your job at the plant? A. Yes, sir.

I called Mr. Rhoden, the foreman of the foundry.

Q. About how long after March 1 did you call him? A. Oh, I imagine maybe two or three days, because it looked like there was a lot of unrest, and I thought maybe it'd settled down—you know—something's be done about it, you know.

Q. And, you called—— A. I called Mr. Rhoden.

Q. —Frazier Rhoden? [217] A. Yes.

Q. What did you ask him? A. I asked him what the job situation was, and he said that I had been replaced, that I should've come on back with the rest of them.

Q. Did he tell you what you would have to do to get a job after this? A. No, sir, he didn't give me any information at all.

Q. Now, after that, did you talk to anyone else at the plant about a job? A. Yes.

Q. About—— A. I came back at a later date.

Q. How long later? A. Oh, I guess maybe two or three weeks.

And, I went out to the office and talked to Mr. George Peacock, relative to the situation. And, at that time, again, he informed me that I had been terminated or replaced.

Q. Did he say anything else—what you would have to do to get your job back? A. No, sir, they were very busy there, and I didn't want to press the issue.

There was no conflict of any kind.

Q. That was during the strike—that you are talking about?

Is that right? [218] A. Oh, yes, sir.

Q. After the strike was over, did you make any application for—— A. Yes, I went back one more time out there and saw Mr. Cline, the personnel director—officer, out there, and asked him about the employment situation.

He said there wasn't any openings at that time, that if I wanted to, I could take an application and fill it out and send it in.

Q. Since that date, have you ever been given notice by the Company to return to work? A. No, sir, the only thing I had from the Company was a letter officially terminating me as an employee.

And, of course, I received my W-2 form from the Company since that time, for income tax purposes.

Q. And, you received this letter from the Company during the strike? A. Well, I don't know exactly when the strike terminated, you know.

But, sometime after that, they sent out a regular form letter, I guess, to all the employees that were terminated, but I had one informing me that my job—my position had been filled.

Mr. Mattson: Your Honor, I have one question, relating to an incident in 1966.

[219] This involves a speech, which has not been as extensively covered as the other—

Trial Examiner: You may proceed.

Mr. Mattson: All right, sir.

Q. (By Mr. Mattson) Mr. Martin, I call your attention to the fact that there was an election at the plant in 1966, on September 22 and 23.

Do you recall, were you at the plant in those days? A. Yes.

Q. Did you attend any meeting held by Mr. Russell, the owner? A. Well, I can remember one or two occasions where Mr. Russell called all of the employees together, to talk to them.

That was his custom at various times, whenever problems come up, to call us together and speak to us about these matters.

Q. Now, I am directing your attention to any discussion of the Union.

Do you recall attending any meeting where the Union was discussed—a plant meeting? A. Yes, sir.

There was such a meeting—I don't know what day it was or what time.

Q. Was it before the election? A. During that time—in which Mr. Russell told us he [220] didn't think we needed a union, that we could go to them for any information we wanted, or if we had any problems, we could go to them and discuss them with them.

And, I believe some phrases were discussed—about the cost of union membership and things of that nature, that he didn't think it was necessary, and it wasn't a policy of the Company to have one.

Q. To have what? A. A union.

Q. Did he express anything else concerning the Union at that time? A. Generalities, sir.

Not having a record—you know—of anything, I'd hate to try to say something that might be at variance with what he did say. I don't want to misrepresent anything.

Q. It has been a long time; I appreciate that. A. Yes, it's been a good while.

Q. Prior to the election, do you recall whether any signs or small cards—emblems—were passed out to employees? A. Yes, sir, there was some cards given out with the word, "No", on them, I believe, during about the time they had the National Labor Relations Board election.

Q. Just before the election? A. Sometime before the election, or in that period.

Q. All right.

[221] To whom were these passed out? A. All the men—employees were handed out—wore them on their clothing or their hats, or something like that.

Q. What did these cards say? A. "No."

Mr. Mattson: All right, sir.

No further questions.

Cross-Examination

Q. (By Mr. Bowden) Mr. Martin— A. Yes, sir.

Q. —you just mentioned the fact that there were some cards passed out with the word, "No", on them? A. Yes.

Q. Let me ask you a few questions about that, now.

Do you remember about—a little over a year before the Steelworker election, that they had an election out there with the independent workers union of Florida? A. Yes.

Q. I will ask you if that is not the election that you are talking about, in which they had the "No's," rather than the Steelworker election? A. No, sir.

Q. You are positive of that? A. I'm fairly—

Q. You are positive that this happened in the Steelworker [222] election? A. That's my thinking right now, sir, my honest thinking, yes, sir.

Q. Yes.

Do you recall whether they wore similar "No" cards in the Independent election? A. I couldn't say positively to that, that these "No" cards were worn.

I don't know—there was another union election, like you said, previous to this one, and it failed. Fact, I don't even know the name of—you know—the union.

Q. Yes.

But, you are positive that these cards were worn in the Steelworker election? A. They were worn prior to an election there, for the NLRB election, yes.

Q. I am not saying that, because I just pointed out that they had another one.

What I am talking about is: It is your testimony that they were worn in reference to the Steelworker election, which was held in 1966.

Is that correct? A. To the best of my knowledge, sir.

Q. Well, are you saying they did or did not? A. I'm saying that they did wear the "No" cards, yes, sir.

[223] Q. All right, sir.

Now, can you fix the date when you talked to Mr. Rhoden better than you have? A. No, sir, I can't I really can't.

There was a lot of confusion.

Q. When did you say you talked to him? A. Approximately three days after this thing had happened, sir.

Q. Well, assuming this happened on the first—that is the day you came down and they had the picket line up—that would be March 1? A. Yes.

Q. Do you remember what day of the week that was? A. No, sir, I don't exactly.

Q. Well, do you remember the day of the week that you might have come down? A. That I can't say, either, positively, there's been such a long period of time, and I didn't keep any records on it.

Q. Yes, I understand.

I am just trying to fix it. Could it have been as much as a week after that? A. It was less than a week, sir, because I was concerned about the job.

I have a large family—I have five children in school.

[224] Q. Well, did you talk to Mr. Rhoden at the time you came down to draw your paycheck? A. No, sir, I didn't get my paycheck until later than that.

Q. Did you go down the second week and draw your paycheck? A. I don't remember—the paycheck was handed to me across the picket line at the gate.

I never did go inside of the plant to get it.

Q. Yes, I understand that.

But, I understand that they passed out paychecks the Friday following the beginning of the strike for the full week, and then, the second week, they handed out paychecks for the part of the week in which the strike occurred.

Is that— A. I got all of mine at one time, sir.

Q. You got yours at one time? A. Yes.

Q. Which would have been the second week?

Is that correct? A. I don't know, sir, what week it was, but they give me all of mine at one time.

And, I was considered terminated.

Q. Now, did you see Mr. Rhoden then shortly before that? A. I called him on the telephone.

Q. Yes, that is what I mean.

[225] Was that shortly before you went to get your check? A. Yes.

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GEORGE PEACOCK

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mattson) Mr. Peacock, what is your position with Florida Machine and Foundry Company? A. Plant manager.

Q. How long have you been employed in that capacity, Mr. Peacock? A. Well—

Q. Approximately, in number of years. A. —ten years.

[226] Mr. Mattson: Your Honor, I would request permission to examine this witness under Rule 43 (b) of the Federal Rules of Civil Procedure.

Trial Examiner: Permission granted.

Mr. Bowden: Your Honor, I am going to object.

I do not think he qualifies. We have the other managing directors of the Company here. Mr. Peacock is just one of the management officials, but he does not necessarily qualify under Rule 43 (b), as a managing officer.

Mr. Mattson: Well, if Your Honor will permit, I think we have both the managing officer basis, plus the adverse witness here, on the basis of the testimony.

He is a hostile and adverse witness, and——

Mr. Bowden: Yes, but that does not qualify him under Rule 43 (b).

Trial Examiner: I am overruling the objection, and you may question him as a hostile witness.

Q. (By Mr. Mattson) Mr. Peacock, did you have occasion to pass out checks to employees after the strike began on March 1, 1967? A. Yes.

Q. Do you recall the first checks you passed out? On what date did that fall?

The strike began on March 1. A. It would be the Friday after March the first—the exact date I don't know.

[227] Q. All right.

That would be March 3? A. (No response.)

Mr. Bowden: I think I have a calendar here.

The Witness: If that's the date, yes.

Mr. Bowden: Here is a calendar.
(Handing document.)

Mr. Mattson: Thank you.

Q. (By Mr. Mattson) I will hand you a 1967 calendar, and if you will refresh your memory from that, please?

(Handing document.)

A. (Examining document.)

March third.

Q. Now, on that date, where were you passing out these checks, sir? A. At the property line, at the main gate.

Q. Were there many strikers or employees outside the gate, waiting for their checks on that date? A. Quite a few.

Q. Would you say in excess of 50? A. Yes.

Q. All right.

Would you say in excess of 100? A. (Pause.)

No—I just don't remember.

[228] Q. Now, what checks were these that you were passing out at this time? A. These would be the pay-checks for the week ending on February 26th.

Q. Now, as you passed out these checks, Mr. Peacock, did you comment or state to various employees that they were terminated, or replaced? A. No, sir.

Q. You at no time made that statement?

Is that your testimony now? A. At that time, or——?

Q. At that time, during that day, in any form, did you indicate to any employees that they were terminated, or did you indicate whether they were replaced, in any manner, Mr. Peacock? A. (Pause.)

Only if they asked me.

Q. What would they ask you?

What kind of question would arouse your answer? A. (Pause.)

Some of them, I think, said, "Do I have a job?" "Can I come to work?"—such as this.

Q. And, if they said this, you would then say either, "You have been terminated," or, "You have been replaced."

Did you use each— [229] A. No, at that time, I did not say that, no, sir.

I would do some checking before I gave an answer to the first question.

Q. On what did you check? A. Well, I would have to check the record to see whether they had been replaced, before I made that statement.

Q. Did you have this record in your hand? A. No, sir.

Q. Where was the record? A. In the main office.

Q. At any time, while you were at the gate, did an employee ask you about—did the employees ask you about their jobs, and you would leave the gate, go to the plant, check for that and come back to the gate and tell them they were terminated, or replaced? A. Yes.

Q. Do you recall any employees by name, for whom you did this on March 3? A. No, sir.

Q. Did you tell this to approximately 50 employees? A. No, sir.

Q. More or less? A. I have no way of knowing more or less.

Q. But, you told this to numerous employees?
Is that correct? [230] A. Possibly.

Q. Now, is it not correct, Mr. Peacock, that as of that date of March 3, the plant was at a—there was a very severe shortage of personnel in the plant? A. (No response.)

Q. I remind you that this is the third day after the strike. A. (Pause.)

Well, what's—no, sir.

Q. There was no shortage on the third day after the strike? A. There was a shortage.

Q. Was it a severe shortage?

Trial Examiner: What is the normal complement of employees at the plant on the day shift?

The Witness: I don't have that figure, sir.

Trial Examiner: Would it be about 100?

The Witness: No, sir, it'd be——

(Pause.)

——150, 175.

Q. (By Mr. Mattson) And, isn't it a fact, Mr. Peacock, that at least 160 or more of the employees went on strike or did not return to work after March 1? A. Yes, sir.

Q. Now, I will ask the question again.

On March 3, was there not a severe shortage of [231] personnel at the plant? A. (No response.)

Mr. Bowden: Your Honor, I think the witness is confused as to whether it was severe or not.

Trial Examiner: I think you ought to ask him in terms of numbers.

Mr. Mattson: All right, sir.

Q. (By Mr. Mattson) Do you recall approximately how many employees you were short on March 3?

Would you say half—more—or less of your necessary complement or ordinary complement? A. (Pause.)

I would say less.

Q. Would it be—would you say you were short by at least one-third of your normal complement? A. Yes.

* * * * *

[232] Q. (By Mr. Mattson) Mr. Peacock, would it be correct to say that on March 3, you were short of men in substantially all job classifications? A. No, sir.

Q. Were there any job classifications that were completely filled? A. Not necessarily completely but we were well—I mean, we were——

Q. You were able to operate? A. I would say well complete, yes, sir.

Q. But, is it true that you could have used men in substantially every classification? A. Not every classification, no, sir.

Q. Would you say in most classifications? A. In most classifications.

Q. As of that date, Mr. Peacock, were you, as an emergency measure, using some office employees—office personnel to perform production work? A. Yes.

Q. Were supervisors also performing some production work, as an emergency measure? [233] A. Yes, sir.

Q. And, did this situation continue for the first month of the strike? A. Yes, sir.

Q. Now, Mr. Peacock, did there come a time in the fall of 1967, when the employees were granted a general wage increase? A. Yes, sir.

Q. Do you recall how much that wage increase was, Mr. Peacock? A. For the majority, eight cents an hour.

Q. What for the others? A. That went from——
(Pause.)

——be 28 cents.

Q. 28 cents? A. Right.

Q. To what classifications? A. Machinists.

Q. Any other rates? A. There was another rate in the maintenance—I'm not sure of that exact figure.

Q. But that was more than eight cents? A. More than eight cents, yes, sir.

Q. All right. [234] Any other classifications? A. There was a change in our shift differential.

Q. What was the change? A. Approximately two cents increase on the shifts.

Q. On which shifts? A. All shifts.

Q. None of the shifts differed by a penny or two? A. (Pause.)

Possibly a penny on the first shift, I think, would be the difference—five, eight, ten; eight, ten, twelve, I guess would be the difference.

Q. It had been five, eight, ten? A. Oh, let's see——

Q. Let me ask you this, Mr. Peacock; this might help you, sir.

Before the increase, what were the rates on the second, third and split shifts?

Were they five, eight and ten? A. Five, eight, ten.

Q. All right.

Now, after the change, what were the rates on the second, third and split shifts? A. (Pause.)

Ten on the split and twelve on the third, and I'm not dead sure of the—it was either two cents—I would say two [235] cents complete—let's put it this way:

It was either seven or eight, but I'm just not sure on that.

Q. About when was this?

Do you recall about when this change went into effect, Mr. Peacock? A. (Pause.)

Gosh, I'm not sure.

Q. Well, do you recall the month? A. I was just going to say I think it was in September.

Q. Now, prior to that change, was the planned or projected change of rates discussed with you?

Was this discussed with you in any way? A. Yes, sir.

Q. Who discussed it with you? A. Mr. Madison.

Q. Mr. Tom Madison? A. Yes, sir.

Q. Was anyone else in the group? A. (Pause.)

I'd say at the time, it was discussed with me, no, sir.

Q. What was said? A. That we would consider putting this wage increase in effect.

Q. All right. [236] Did Mr. Madison say this to you? A. Yes, sir.

Q. Did he say what the basis for that rate change was, Mr. Peacock? A. (Pause.)

The basis of it, no, sir.

Q. Were the amounts discussed with you? A. Yes, sir.

Q. Was this discussion to determine the amounts that you should put into effect? A. No, sir.

Q. About how long before the rates were put into effect was this discussion taking place? A. (Pause.)

I'd say one week.

Q. Was that the first you knew about it, or had you discussed this before? A. Putting the wage increase in?

Q. Correct. A. It had not been discussed with me before.

Q. Was this discussion with you a discussion to arrive at rates, or to decide whether to put the rates into effect, or was it merely a notification to you? A. Notification.

Q. I see.

[237] Now, prior to the rates being put into effect, was there a notice in the plant, which indicated to employees that rates could not be changed because it would not be lawful, or words to that effect? A. (Pause.)

I'm not sure of this notice in the plant.

Q. Are you normally aware of bulletin board— A. Yes, sir.

Q. —notices? A. Yes, sir.

Q. All right.

Now, if you will think carefully if you recall any notice being posted concerning wage rates or increases?

A. (Pause.)

I just could not say, sir. I just do not remember.

Q. Did Mr. Madison say anything to you as to whether these rates could be put into effect lawfully or unlawfully?

A. No, sir.

Q. Did he tell you why they were being put into effect?

A. No, sir.

Q. After they were put into effect, did you have occasion to call a group of employees in and reduce a group by one cent? A. (Pause.)

Reduce a group by one cent?

[238] Q. One cent.

In other words, say, from \$1.93 an hour to \$1.92 an hour? A. (Pause.)

I recall there was something concerning one or two discrepancies in rate changes. Specifically what you're talking about, 1.92, 1.93, I don't recall that number at this time.

Q. Do you recall that a rate had been put into effect, but you felt it was the Company's position that it was a discrepancy, and it should be reduced? A. I don't know that the word should be "reduced." It should be made proper to what was said that was going to be done.

As I remember, it was a clerical error, and this was corrected. I think this was the incident. It was not a matter of reducing; it was a matter of a clerical error, which was made—

Q. Would you say that employees had been paid—a particular group or shift—a penny too much per hour?

A. I think it was concerning the split shift, if I remember correct.

The exact details, the penny—I don't recall the penny, if it was a penny, then this is the amount you're talking about.

Q. Were employees called in a group to be told they were [239] getting one cent too much, that they were going to be reduced by one cent? A. There was a group, and it was, again, as I say, to correct a clerical error, not necessarily that they were reduced—this is true—but, it wasn't reducing their pay, as I think in the term you're saying.

It was correcting a clerical error that we had made.

Q. In other words, you told the group that they were going to get one cent less than they had recently been led to believe or had received?

Trial Examiner: I think the effect of Mr. Peacock's testimony is that the employees, through a clerical error, had been paid one cent too much per hour, and they were called in and told they were getting—that there was an error, and they were getting one cent less.

As I take it, your question is did you tell them why they were getting the penny less?

What were they told why?

The Witness: I think, sir, at that time that I told them that this was an error, an honest error that we had made, yes.

We make them periodically. We can't be perfect.

Trial Examiner: All right.

Q. (By Mr. Mattson) Were there any other rate increases, other than this one, to your knowledge, in the plant, Mr. [240] Peacock? A. (Pause.)

Let's see. We named—which ones did we name?

Trial Examiner: There is a general increase of eight cents, 28 cents to machinists and some figure in excess of eight cents to the maintenance department.

The Witness: The pattern makers had a different raise.

Q. (By Mr. Mattson) Do you recall the rate? A. Again, I'm afraid I can't give you the exact figure on that.

I mean, I just didn't keep them right in my mind.

Q. Was it in excess of eight cents? A. It was in excess of eight cents, yes.

Q. Do you recall if maintenance and pattern makers were given an increase in excess of 20 cents? A. I think it was a little less than that.

(Pause.)

I'm trying to remember the exact penny. I think it was in this neighborhood, or maybe a little less—18 or something.

Q. Now, other than these pay increases in September, that we have been talking about, this group, were there any later changes in pay rates for any classifications? A. Complete classification?

[241] Q. No, for any classification or group. A. Individually?

Q. Yes. A. Yes, sir.

We have our merit raises and apprenticeship program raises, which continue right on.

Q. Now, were there any job classifications that were raised in any way? A. Job classifications?

Q. Yes.

Either by a penny—or less or more? A. Not to my knowledge.

Q. All right, sir.

Mr. Peacock, the strike began at 9:30 on February 28, 1967. A. Yes.

Q. Is that the best of your memory? A. Yes, sir.

Q. When that strike was called, you were notified about it, were you not? A. Yes, sir.

Q. You were aware of that? A. Yes.

Q. Do you recall a meeting being held—do you recall attending a meeting called by the Company on the snap floor, [242] of the employees that night—attended by yourself, perhaps Mr. Russell, Mr. Madison and Mr. Thomas Peacock, perhaps?

Do you remember this meeting? A. Oh, yes, sir.

Q. Were all of the employees in the plant called together to this meeting? A. The employees in the plant were at that meeting, yes, sir.

Q. Who spoke to the employees? A. I did, for one.

Q. When they were assembled? A. Yes, sir.

Q. About what time of night was this? A. Oh, I would say in the neighborhood of ten to eleven o'clock.

Q. What did you tell the employees, to the best of your memory, now? A. (Pause.)

Well, I know one thing for sure that I did tell them, because I always do when I get my men together, that we were, of course, under a strange situation, and we were doing a job—to be safe.

I know for sure that I talked to them about that, because I always do—work safely.

[243] Q. All right, sir.

What did you say about their going on strike, or not going on strike, if anything? A. I don't recall saying anything to them about going on strike.

I mean, the strike had happened; the men that were there were just there.

Q. Did you suggest in any way that they not go on strike, Mr. Peacock? A. I don't recall it.

Q. Did you ask them to stay at work? A. I don't recall asking anybody to stay at work, no, sir.

Q. Did you talk to any of them about possible pay increases? Did you— A. No, sir.

Q. —talk to them about that at this time? A. No, sir.

Q. All right.

Who else spoke to the employees? A. (Pause.)

I think Mr. Madison talked to them, and I believe Mr. Russell talked at that time.

I'm just not sure of who-all talked to them at that time.

Q. I see.

[244] What did Mr. Russell say? A. I don't recall, sir, other than just possibly—

(Pause.)

Well, I just don't remember what he said.

Q. Do you recall whether he asked them not to go on strike? A. I don't recall him—no, sir—asking them not to go on strike.

Q. How about Mr. Madison?

Did he ask them not to go on strike? A. No, sir.

Q. Or words to that effect? A. I wouldn't—I don't recall anybody asking them not to go on strike.

Q. Did they ask them to stay in the plant to work? A. We announced that we were going to work that night, yes, sir, we had a crew to work and steel to pour, and the men to do with, and we said we were gonna work that night, yes, sir.

.

[245] Q. (By Mr. Mattson) Do you recall either Mr. Madison or Mr. Russell indicating in any way to the employees that they might get a raise if they stayed off strike, or stayed at work that night? A. Well, in the first place, as I said, I'm just not positive that I would say that either one of them spoke, but to make a statement that they would get a pay raise, I would say not—I would say no to this question.

Q. You do not recall that being said? A. No, sir.

Q. Mr. Peacock, you saw the gentleman who just walked in the door, and is seated to the right back here? A. Yes, sir.

Q. Do you know him by name? A. (Pause.)

Golly, you know, when I saw him walk in, I wondered, well, who is it, by golly.

If I saw 15 or 20 names, I could pick the name out— if they were written down.

Q. If I were to tell you his name is Mr. Fishburne—

A. Yes.

Q. —would that strike a bell? A. Yes, Fishburne.

Q. Do you recall, Mr. Peacock, if on the night of the strike, before this meeting we are talking about, whether [246] you talked to Mr. Fishburne—after the strike had commenced? A. After 9:30?

Q. Yes. A. Specifically talked to him?

Q. Yes. A. No, I do not recall this.

Q. Is it possible, but you just do not recall? A. It is possible, yes, sir.

Q. But, you do not remember at this time? A. No, sir.

Q. In September of 1966, did you have occasion to individually question employees in offices in the plant, concerning union matters or union activities? A. No, sir.

Q. You at no time spoke to employees privately, concerning union matters in any way? A. No, sir.

Q. Do you know whether employees were being called in, as Company policy, for private interviews— A. Yes, sir.

Q. —to discuss the Union? A. Yes.

Q. What— A. Well, now, they were called in. [247] Now, I don't know what the discussion was about. You said, "to discuss the Union," and I would say no to that, sir.

Q. You had no idea what they were being called in for? A. They were called in for interviews, yes, sir.

Q. But, you did not know what the subject matter was?
A. No, sir.

I did not know what the subject matter was, no sir.

Q. Were substantially all of the employees in the plant called in, one by one, during this period, before the election? A. Yes, sir.

Q. You were notified that they would be called in?
A. I knew that they would be called in, yes, sir.

Q. You were advised that they would be called in, prior to these interviews—that they were going to do this? A. Just prior to their interviews?

I would not necessarily know that, no, sir.

Q. I mean, did the other officials notify you that they were going to conduct interviews? A. Oh, yes, sir.

Q. Before they were actually conducted? A. Yes, sir.

Q. And, they did not tell you what these were for?
A. No, sir.

[248] Q. Did you ask them what the reason was? A. No, sir. No, sir.

Q. Did you ever have any knowledge of what they were for, Mr. Peacock? A. (Pause.)

I don't know—what do you mean by "knowledge of what they were for"?

Q. Were you ever informed by the officials of the Company what had taken place at the interviews? A. No, sir.

Q. Now, after the strike began, Mr. Peacock, where was your main source of hiring people to man the plant?
A. People that came to our premises for employment.

Q. You mean off the street? Applicants off the street?
A. Yes, sir.

Q. What about the unemployment office, or spot labor pools around the city? A. (Pause.)

A. We ran ads in the paper, and just word, in general, that we were hiring personnel.

Q. At any time, did the Company send out trucks to the employment office or any spot labor pools, to bring back loads of employees—workers, in an attempt to man the [249] plant? A. (No response.)

Mr. Bowden: Your Honor, I think the witness is being asked questions about an area about which he had nothing to do, and he is trying to be honest with the questions.

Trial Examiner: Well, don't you think the witness could remember whether he had trucks come to the plant with employees, if such an unusual thing happened?

Mr. Bowden: This is another department.

Trial Examiner: I understand that. But, if men would come to the plant, they would come in, and presumably as plant manager, he would know what was going on, to man the plant.

Mr. Bowden: He is only responsible for the production, and where they got the employees is not——

Trial Examiner: I should think he would remember. If he does not remember, he can say so. I think the question is fairly asked of him. Did trucks come with men, wherever they came from—with men?

The Witness: (Pause.) Not trucks, as such—I mean, when you talk about trucks——

Q. (By Mr Mattson) What form of vehicle? A. We had—what is it— [250] (Pause.) Not a van, just a—I'm not familiar with——

Q. Station wagon?

Trial Examiner: Limousine?

The Witness: Not a station wagon—I'm thinking of a——

Mr. Bowden: Pickup truck?

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Trial Examiner: Limousine?

The Witness: Not a station wagon—I'm thinking of a—

Mr. Bowden: Pickup truck?

The Witness: Well, not pickup truck. One that has quite a few seats in it—not a big bus, but—I don't know what they call it.

Q. (By Mr. Mattson) Were these groups, these new employees, being brought in this way, new groups, throughout the course of the strike? A. (Pause.) Not throughout the course of the strike, no, sir.

Q. For the first two months of the strike? A. In the beginning, yes, sir.

Q. Would you say at least two months—through March and April? A. Yes, sir.

Q. Now, when these groups came in, was it your responsibility to see that they got into certain types of jobs in the plant—appropriate jobs? A. As they were hired, I would put them to work, yes, sir, in their departments that they were put in.

[251] Q. Now, how would you determine, when you get a group of new men in, into what types of jobs you should put them? A. Through the screening of the applicant in the personnel office.

This information.

Q. Now, on these employees—were there large numbers of employees who had no prior training in the type of work you had at this plant? A. Yes, sir.

Q. Were many of these employees put in on a temporary basis, to see how they worked out? A. All employees are on a 30-day probationary period.

Q. To see if they could perform the work? A. Not temporary.

Q. To see if they could perform the work? A. To see that they could do the work, yes, sir.

Q. Is it correct that large numbers of these employees were unsatisfactory to you, and had to be let go? A. (Pause.)

I would say—no, sir.

Q. What per cent would you say, from week to week, were unsatisfactory? A. Oh, gosh.

Q. Would you say 25 per cent, 30 per cent? [252] A. Of what figure?

Q. Of the total employees who were coming in. A. Less than that, sir.

Q. About what, to the best of your— A. Ten, 15 per cent.

Trial Examiner: You mean about one or two employees out of ten turned out to be unsatisfactory?

The Witness: (Pause.)

I'd say yes.

Trial Examiner: Not more than that?

The Witness: It could be a little more—I mean, I just don't remember, sir.

Q. (By Mr. Mattson) Were there any numbers of these who did not show up after the first day or two of work? Were there any problems in this respect? A. Yes, sir.

Q. About how many, would you say, here—percentage-wise, Mr. Peacock? A. Ten, 15 per cent.

You want a figure.

Q. All right.

Were any of these employees called into the Service, or were any of these summer students—I mean students—excuse me—who were hired for temporary work—or, any other classification hired for temporary work, for an emergency, [253] such as students? A. (Pause.)

Yes, sir—yes.

Q. About how many of these, percentagewise, were temporary types? A. Very isolated cases—one or two, or something like this.

People, I mean, not per cent.

Q. One or two a week, a month, or— A. Over the period of time.

Q. Now, Mr. Peacock, isn't it a fact that on occasion, you told employees that they were replaced or terminated, without checking the records—on occasion? A. No, sir.

Q. It would be your testimony that every time such an inquiry was made that you went to check the records first? A. Yes, sir.

Q. And thereafter, notified that individual? A. Yes, sir.

Mr. Mattson: All right, sir.
No further questions.

Cross-Examination

Q. (By Mr. Bowden) Mr. Peacock, let me ask you a question or two. A. Okay.

[254] Q. Your main responsibility at the plant is production, is it not? A. Yes, sir.

Q. During the Union campaign with the Steelworkers, were you assigned any active part or any responsibility for that campaign, at all? A. No, sir.

Q. Did you participate in that campaign, at all? A. No, sir.

Q. Now, during this strike situation, which occurred on February 28 and March 1, did you have any responsibility, as to the procurement, or the hiring of employees? A. No, sir.

Q. Who handled that? A. The personnel office.

Q. Did you participate in any of the Union negotiations, in reference to knowing what was going on in the negotiations? A. No, sir.

Q. This raise that was given.

What is Mr. Madison's title, with the Company, first?
A. Executive vice president.

Q. Yes.

And, you were advised from Mr. Madison that these rates were going in.

Is that correct? [255] A. Yes.

Q. There was no discussion asking your approval of that, Mr. Peacock? A. Oh, no, sir.

No, sir, there wasn't.

Q. Now, did the Company maintain a replacement list of employees? A. Yes, sir.

Q. Did you have anything to do with this replacement list? A. No, sir.

Q. Did you know from time to time who had been replaced, or who was working? A. No, sir.

Q. Until you checked, I meant. A. Until I checked specific cases.

Q. Now, when you mentioned the fact that the machinists got a raise of 28 cents per hour, they were, as I understand it, placed at \$3.00 an hour.

Is that right? A. Yes.

Q. Do you know whether this raise had been suggested to the Union in negotiations, or not? A. No, sir.

Q. I see.

Now, as a matter of fact, this did not constitute a [256] 28 cent raise to all of your machinists, did it?

Didn't you—— A. No, sir, there's a base journeyman's rate, 2.62.

Q. That is the base rate? A. And, we had some machinists at 2.70.

Q. You had some at \$2.90, too, didn't you? A. 2.90—machinists?

Q. Yes—well, I mean—millwrights, then.

You had rates sprinkled in between the base rate and the three dollars, didn't you? A. Yes, sir.

Q. At the time you passed out the checks on March 3, there were quite a few people there at that time? A. Yes, sir.

Q. Was there very much discussion with you and anybody at that time? A. At that time, no, sir.

Q. I will ask you if it was not the following week, on March 10, when you began to get the inquiries about whether they had been replaced or not? A. Yes, sir.

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[258]

ELIJAH FISHBURNE

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows;

.

Direct Examination

Q. (By Mr. Mattson) Mr. Fishburne, how long were you employed by Florida Machine & Foundry Company prior to the strike of March 1—February 28, 1967? [259]
A. A little better than two years.

Q. What was your job classification at the time of the strike? A. Machinist helper.

Q. What was your rate of pay at that time? A. 1.74.

Q. An hour? A. Yes.

Q. Now, I call your attention to the fact that the strike commenced on Friday—withdraw that “Friday”—on February 28, 1967, about 9:30.

What shift were you working? Were you in the plant working that day? A. I worked from 4:00 to 12:30.

Q. After midnight? A. Yes.

Q. Which would carry you over into March 1, 1967?
A. Yes.

Trial Examiner: Did you say yes?

The Witness: Yes.

Q. (By Mr. Mattson) Do you recall when the strike began? A. Yes, I do.

Q. Did you continue working on your shift? A. Yes, I did.

[260] Q. Did any Company official speak to you while you were at work? A. Not directly to me.

There was about maybe four, five of us. Mr. Peacock, he talked to us in the shipping area.

Q. About what time of night was this?

Do you recall? A. After 9:30—a little after they walked out.

Mr. Bowden: Your Honor, can he identify "Mr. Peacock" now?

As I understand it there are two of them out there at the——

The Witness: Mr. George.

Mr. Bowden: The one who just testified?

The Witness: Yes, sir.

Mr. Bowden: All right.

Q. (By Mr. Mattson) Now, what did George Peacock say? A. He told us that the guys that remain in the plant that night, after the other guys walked out, would receive a ten cent raise on the hour.

Q. Now, did you remain at work until the next morning? A. Yes, I worked there all night.

Q. Now, the next day was March 1.

Did you go on strike, or did you go back to work? A. I left, I didn't go back.

[261] Q. And, after that, did you get any letter from the Company saying you were terminated and replaced? A. Yes, I did.

Q. About how long after you went out? A. I'm not sure, but I think probably a couple of weeks—I'm not sure.

Q. About a couple of weeks—in March of 1967? A. Yes.

Mr. Mattson: No further questions.

Cross-Examination

Q. (By Mr. Bowden) Do you recall who the other men were who were standing there with you at the time this statement was made by Mr. Peacock? A. Some of them.

Would you like to have their names?

Q. Yes. A. Johnnie Hall and Clifford Hall—I think that's his last name—

Q. Clifford Hall? A. Yes.

Q. And Johnnie Hall? A. Yes.

Q. All right. A. (Pause.)

I'm not sure. I don't want to give someone's name who [262] wasn't there. I'm not sure of all of them, but I'm sure of these two guys, and myself.

Q. Well, did they all work in your department? A. No. I worked in the machine shop.

Q. What department were they out of? A. Cleaning room—yes, the cleaning room.

Q. Cleaning room employees? A. Yes.

Q. There were two of those, you think? A. Yes, sir.

Q. And, Johnnie Hall and Clifford Hall are the only two that— A. Only two I can remember.

Q. Yes.

How long have you worked there? Two years, I believe you stated? A. Yes, a little better than two years.

Q. All right, sir.

After the strike—you went out on strike on March 1, did you say? A. Yes.

Q. Did you ever come back and re-apply for your job?

A. No, sir, I did not.

* * * * *

[264]

THOMAS M. MADISON

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

* * * * *

Direct Examination

Q. (By Mr. Mattson) I beg your pardon, Mr. Madison, but did you state your name and address for the record?

A. I did, yes.

Q. What is your position at the plant? A. Executive vice president of Fleco Corporation and Florida [265] Machine & Foundry Company.

Q. And, about how long have you occupied that position, approximately? A. That particular position, about three years with one Company and about—less than a year with the other.

Q. In 1966 and 1967, what position did you occupy? A. I was executive vice president of Florida Machine, and—in 1966; made executive vice president of Fleco—in the fall of 1967.

Mr. Mattson: General Counsel requests permission to examine this witness under Rule 43 (b) of the Federal Rules of Civil Procedure.

Trial Examiner: Permission granted.

Mr. Bowden: Same objection, Your Honor.
He has not shown—he has not been shown to be hostile.

Mr. Mattson: I believe he is a management agent.

Trial Examiner: The objection is overruled.

Q. (By Mr. Mattson) I hand you what has been marked for identification as General Counsel's Exhibit No. 2, and ask you if that is a correct copy of the Union telegram, dated July 9, 1967, which was received by the Company?

(Handing document.)

A. (Examining document.)

Yes.

Q. All right.

[266] This telegram is a one page document, which in effect, tells you that the strike has been called off, and in substance, that the employees are requesting to return to work.

Is that correct? A. Yes.

Mr. Mattson: Perhaps we could have this in by stipulation?

Well, I propose that the document be received in evidence.

Mr. Bowden: No objection.

Trial Examiner: General Counsel's Exhibit No. 2 is received.

(Whereupon, the document previously marked as General Counsel's Exhibit No. 2, for identification, was received in evidence.)

Mr. Mattson: I might note for the record that both copies have an inked-in "T. M. Madison" at the bottom, and this is not offered in conjunction with the offer.

The offer concerns just the typed portion.

Q. (By Mr. Mattson) Mr. Madison, the Company did in fact receive that telegram from the Union, did it not?
A. Yes.

Q. And, on about what date—July 10, or the same day, July 9? [267] A. July 10 we received it.

Q. Of 1967? A. Yes.

Mr. Mattson: I would request that this document be marked General Counsel's Exhibit No. 3.

(Whereupon, the above-referred to document was marked as General Counsel's Exhibit No. 3, for identification.)

Q. (By Mr. Mattson) Mr. Madison, I hand you what has been marked as General Counsel's Exhibit No. 3, for identification, and ask you if that is not the list of employees—strikers or employees, who did not return to work upon commencement of the strike February 28, 1967, prepared by the Company, pursuant to my subpoena?

* * * * *

[268] Let the record show that General Counsel has offered the document to Mr. Bowden for inspection.

Mr. Bowden: Yes.

Trial Examiner: General Counsel's Exhibit No. 3 is received.

(Whereupon, the document previously marked as General Counsel's Exhibit No. 3, for identification, was received in evidence.)

Mr. Mattson: General Counsel requests that this document be marked as General Counsel's Exhibit No. 4, for identification.

(Whereupon, the above-referred to document was marked as General Counsel's Exhibit No. 4, for identification.)

Q. (By Mr. Mattson) Mr. Madison, I hand you what has been marked as General Counsel's Exhibit No. 4, for identification, and ask if that is the list prepared by the Company of strikers who requested reinstatement, together with the dates of such requests, as shown by Company records?

(Handing document.)

A. (Examining document.)

This is.

Q. Now, this is the document prepared at my request?

A. Yes, on your subpoena.

Mr. Mattson: All right, sir.

[269] The document has been shown to Mr. Bowden, and General Counsel would now offer General Counsel's Exhibit No. 4 in evidence.

Mr. Bowden: No objection.

Trial Examiner: General Counsel's Exhibit No. 4 is received.

(Whereupon, the document previously marked as General Counsel's Exhibit No. 4, for identification, was received in evidence.)

Mr. Mattson: General Counsel would request that this document be marked as General Counsel's Exhibit No. 5, for identification.

(Whereupon, the above-referred to document was marked as General Counsel's Exhibit No. 5, for identification.)

Q. (By Mr. Mattson) Mr. Madison, I hand you the document which has been marked General Counsel's Exhibit No. 5, for identification, and I will ask you if that is the list prepared pursuant to my subpoena request, by the Company, of all strikers who were sent termination letters on March 16, 1967?

(Handing document.)

A. (Examining document.)

Yes.

Mr. Mattson: The document has been shown to Mr. Bowden, and I will now offer General Counsel's Exhibit No. 5 in [270] evidence.

Mr. Bowden: No objection.

Trial Examiner: General Counsel's Exhibit No. 5 is received.

(Whereupon, the document previously marked as General Counsel's Exhibit No. 5, for identification, was received in evidence.)

Q. (By Mr. Mattson) Mr. Madison, in about August of 1966, do you recall whether the Employer posted a notice in the plant, in which it advised the employees concerning certain plans the Employer had to revise its hospitalization program, discussing the increase—contemplated increase in the room rate from nine to fifteen dollars a day, and an increase in everybody's life insurance up to \$5,000?

Do you recall that notice being issued? A. The notice was passed out, yes, sir.

It was not posted on the bulletin board.

Mr. Mattson: I would request that this document be marked as General Counsel's Exhibit No. 6, for identification, please.

(Whereupon, the above-referred to document was marked as General Counsel's Exhibit No. 6, for identification.)

Q. (By Mr. Mattson) I hand you what has been marked as General Counsel's Exhibit No. 6, for identification, and ask [271] you to look at that, a one page document, dated August 3, 1966.

(Handing document.)

And, I ask you if this is the notice you referred to as having been passed out to the employees? A. (Examining document.)

It's similar to the one. I'd have to check our records to see if it's exactly it—a duplicate.

Q. Would you make that check now?

Trial Examiner: I am going to suggest with respect to all such checks that I am going to receive them, subject to a later check, and if any variance is brought to my attention, we will reconsider the admission of the document.

Are you offering General Counsel's Exhibit No. 6 at this time?

Mr. Mattson: Yes, sir, I am offering General Counsel's No. 6.

Trial Examiner: General Counsel's Exhibit No. 6 is received.

(Whereupon, the document previously marked as General Counsel's Exhibit No. 6, for identification, was received in evidence.)

Q. (By Mr. Mattson) Now, as you recall, Mr. Madison, how was that passed out to the employees? A. I think it was handed out with their paycheck—I'm not [272] entirely sure.

Q. About the date on that letter—August 3, 1966? A. Yes, approximately that date.

Q. All right.

Now, Mr. Madison, pursuant to my subpoena, did you prepare a list or have a list prepared which reflected the dates on which certain strikers were allegedly replaced, and the dates of their replacement? A. Yes, I did.

Q. I hand you this document, Mr. Madison, and ask you if that is the document you refer to?

(Handing document.)

A. (Examining document.)

Yes, this is the document I had our office prepare, yes, sir.

Q. I will ask you at this time, Mr. Madison, on what date was Mr. Willie Boggs—striker Willie Boggs and striker Rufus Smith replaced? A. These are by job classifications, so it'll take me a minute to find Willie Boggs.

Do you know where he is, by chance?

Q. Yes.

(Indicating.)

A. Willie Boggs, yes.

The record shows that he was replaced by Leon Mungin [273] and the rate was \$1.55. He was replaced on 3/22/67.

Q. And, Mr. Rufus Smith? A. Rufus Smith?

He was replaced by David Baumann on 3/22/67, according to this document.

Q. Is there any indication in there on what date Mr. Withers was replaced—the carpenter?

(Indicating.)

A. Withers?

Yes, he was replaced, according to this document, on March 3, 1967.

If I may, there's one correction on this list that I noticed last night. It's a minor one, but—there's a typographical error after—Alex Chance was replaced on March 13, 1967.

It's just a typographical error. They have '66. We could correct that—

Q. That is not under question at this time. A. No, I just wanted to get that.

Q. Thank you very much. A. Yes.

Mr. Mattson: If I may have one moment off the record, to study this document a little further?

Trial Examiner: All right.
Off the record.

[274] (A short recess was taken.)

Trial Examiner: On the record.

Q. (By Mr. Mattson) Mr. Madison, were you here when Mr. Alonzo Harris testified yesterday? A. Yes.

Q. Do you recall that he indicated that he had been retired by the Company? A. No, sir, I did not understand that.

Q. Do you know whether or not he was retired by the Company? A. As far as—no, as far as I'm concerned, as far as my knowledge, he was never retired by the Company.

Q. Was he given payment for his pension fund, or any other benefits that had accrued over the years? A. Yes.

Yes, upon his replacement and termination, yes.

Q. But, to your knowledge, he was not retired, he was not due for retirement? A. No, not to my knowledge.

Q. Now, he indicated that he was not given his vacation pay.

Do you recall why he would not have been given his vacation pay, what the basis for the calculation would be? A. Well, our vacation is not on an accrual basis, and his employment date was August first, and he was terminated—I [275] don't know—sometime in March; therefore, he had not been there that particular year, and did not earn his vacation.

So, he was not eligible for vacation or vacation pay, in the event of his termination.

Q. In other words, he would have had to remain at work until a certain date? A. Until August first, if August first was his employment date.

Q. Then he would have received that accrued vacation? A. Yes.

He would have received his vacation pay or his vacation, whichever.

Trial Examiner: Now, Mr. Madison, if he wanted to take a vacation, if there had been no strike, and he took a vacation in July, would he have been permitted to take a vacation in July?

The Witness: Yes, sir.

Trial Examiner: Is it a full year, or a certain number of days?

The Witness: No, it's a full year, Your Honor, but we have our vacation period, June, July and August, during the usual summer months.

And a man can take that vacation during those months, even though it—his anniversary—as long as his anniversary [276] date is prior to September first.

So, in Al Harris' case, if he had decided to take his vacation in June of that year, he would have been permitted to do so during the vacation period, even though his anniversary date was August first.

Trial Examiner: If he quit before August first, would there have been a recapture of the vacation?

The Witness: Yes, yes.

Q. (By Mr. Mattson) Mr. Madison, you attended a number of the negotiation sessions? A. Yes, I did.

Mr. Mattson: General Counsel would propose a stipulation at this time, for the record, that negotiations were conducted between the Employer and the Union on the following dates:

November 28, 1966——

Mr. Bowden: Do you want this from the start?
The first one was October 27.

Mr. Mattson: Was there a meeting conducted?

Mr. Bowden: We met for a meeting, but no Union representatives showed up.

The committee was there.

Mr. Mattson: Well, I want to go on negotiations having been undertaken.

You can put that in evidence.

Mr. Bowden: I think we ought to have all of the [277] meetings, if you are going to list meetings.

This was a meeting set up, and the committee was there and the Company was there.

Mr. Mattson: What date was that?

Mr. Bowden: October 27, 1966.

Mr. Mattson: All right.

But, negotiations were not conducted on that date?

Mr. Bowden: There was nobody there to negotiate, other than the Union committee.

They were looking for the Union representatives.

Mr. Mattson: Now, then, the next date would be November 28, 1966?

Mr. Bowden: Right.

Mr. Mattson: And, negotiations did take place on that date?

Mr. Bowden: Right.

Mr. Mattson: And hereafter.

Mr. Bowden: Right.

Mr. Mattson: Next meeting, December 19, 1966.

Mr. Bowden: Yes.

Mr. Mattson: The next meeting was January 6, 1967.

Mr. Bowden: Right.

Mr. Mattson: Next meeting, January 25, 1967.

Mr. Bowden: Yes.

Mr. Mattson: Next meeting, February 7, 1967.

[278] Mr. Bowden, is that correct?

Mr. Bowden: Right.

Mr. Mattson: And, the stipulation to include that on this date, February 7, and hereafter, all meetings were before the Federal Mediator.

Mr. Bowden: That is right.

Trial Examiner: That includes the one on February 7?

Mr. Mattson: Includes the one on February 7, yes, sir, and thereafter.

Trial Examiner: All right.

Mr. Mattson: Next meeting was held on February 13, 1967.

Mr. Bowden: Yes.

Mr. Mattson: Next meeting, February 22.

Mr. Bowden: Yes.

Mr. Mattson: Next meeting, March 14.

Mr. Bowden: Right.

Mr. Mattson: The next meeting was held on May 1, 1967.

Mr. Bowden: Right.

Mr. Mattson: And, the next meeting and last meeting was held on August 7, 1967.

Mr. Bowden: Correct.

Mr. Mattson: General Counsel, together with Mr. Bowden, would submit that as a stipulation.

Trial Examiner: The stipulation is noted.

[279] Q. (By Mr. Mattson) Mr. Madison, did you attend the meeting of November 28? A. Yes.

Q. Did you attend the meeting of December 19? A. As far as I recollect, yes.

My notes would show that.

Q. The next meeting, on January 6? A. Yes.

Q. And, the next meeting, on January 25? A. Yes.

Q. How about the first meeting before Federal Mediator Kazin, on February 7? A. Yes.

Mr. Bowden: We will stipulate that Mr. Madison was at all meetings except the March 14, 1967—

The Witness: And, the August 7.

Mr. Bowden: And the August 7.

Mr. Mattson: Thank you.

I will accept that stipulation.

Trial Examiner: The stipulation is noted.

Q. (By Mr. Mattson) Now, during the meetings, the first three or four meetings, is it correct that the Employer representatives indicated to the Union that they had made a survey of the wages or rates in the area, and as a result of such survey, that they felt that their present rates were [280] satisfactory?

And, that was in support of their position that they would retain their own—the present pay rates? A. Surveys—I don't know.

We felt as though our pay rates were in line. Now, these were informal surveys, yes.

Q. And, you so indicated that you had made such a survey? Your views were based on such a survey during the course of these first few meetings?

Is that correct? A. Wholly on the survey?

No, no, that's not correct, not wholly on the survey, no.

Q. Not wholly, but based in part—— A. Partially, yes.

Q. ——based on the survey? A. Partially, yes.

Q. Now, later, during the course of the negotiations, there was some increase or some wage increases offered by the Employer, were there not? A. Yes, sir.

Q. And, was it so indicated to the Union representatives, that this increase now being suggested by the Company was based upon more recent, new surveys? A. Yes.

[281] Q. Which indicated that such wage increases could be offered by the Company at this time? A. Yes. Yes, partially, also.

Q. Is it also correct that at the time the surveys were mentioned, that the Union negotiators asked as to the nature of these surveys and for further information from the Employer in this—— A. Not to my recollection, no, sir.

Q. Is it possible that they asked for this information?

Mr. Bowden: I think, if I may interject here—are you talking about during negotiations, or by letter.

Now, we furnished this by letter.

Mr. Mattson: I am talking about during negotiations. My question is explicit.

Q. (By Mr. Mattson) During your presence, do you now recall any Union representative asking for this information on these surveys? A. No, sir.

Q. Is it possible, or do you deny that they asked for it? A. No, it's possible, yes.

Q. Now, during these negotiations with the Union, when the subject of the Union request with respect to hospitalization and insurance benefits arose, did the Employer at any time indicate to the Union that it had previously had plans to [282] increase such benefits, as indicated by its August 3, 1966—— A. In the negotiations?

Q. During the negotiations. A. Not to my recollection.

Q. They at no time during these negotiations mentioned such plans, did they? A. Not to my recollection.

Q. And, noting that the letter of August 3, 1966, contemplated a raise to \$5,000 in life insurance, would I be correct in stating that the Employer at no time during negotiations offered to the Union to raise its life insurance benefits to a \$5,000 level? A. Would you rephrase that again, please?

Q. Did the Employer representatives at any time during negotiations offer to raise this life insurance benefit to a \$5,000 level, as suggested by the Union? A. As suggested by the Union?

Q. Did the Union request the 5,000? A. Not to my—my notes would show that—not to my recollection. Possibly, they could've.

Q. Did the Employer ever offer to raise its life insurance benefits to \$5,000? A. I don't think we got that far in our negotiations.

[283] Q. You did make offers less than \$5,000, did you not? A. On life insurance, in particular?

Q. Yes. A. Not to my recollection.

Q. Did you suggest a \$3,000 level? A. No.

Q. What was the present level in the plant, during the negotiations, on life insurance? A. It's \$2,000 for certain job class—certain annual incomes and I believe it's \$3,000 for certain other annual incomes.

Q. The maximum being \$3,000? A. Yes, to my recollection, now. I don't have my notes in front of me.

Q. And, the Employer's position was at all times during negotiations that that was as high as they wanted to go? A. To my recollection. Now, possibly the notes would show otherwise.

Q. But, they at no time offered to increase life insurance to \$5,000? A. Did we actually offer to do so?

Q. Yes. A. I'd have to pass on that question. My impression is no.

[284] Mr. Bowden: Your Honor, could he have his notes to refer to?

He might be able to answer these questions.

The Witness: My notes would show that.

Trial Examiner: No, I would rather test his recollection, Mr. Bowden.

Mr. Bowden: All right.

Q. (By Mr. Mattson) Now, Mr. Madison, these two surveys that you mentioned— A. Two surveys?

Q. Yes.

I believe you indicated that you had a survey at the outset of negotiations, which you mentioned would support the Employer's position to maintain the status quo with respect to wage rates? A. Yes.

Q. And thereafter, when the Employer came up with a wage offer for certain limited classifications, you indicated that the area survey—a more recent survey indicated that these raises were appropriate for the Employer to offer at that time—a more recent survey?

Is that correct? A. Not an area survey.

No, it was an informal survey of certain employers in our type industry—and certain job classifications and in [285] addition, an across the board increase—

Trial Examiner: Well, based on the survey of the rates in effect at other companies doing similar manufacturing of similar products?

The Witness: Yes, sir.

Trial Examiner: You had two surveys, one at the outset of negotiations and one later, on the basis of which, some wage increases were offered?

The Witness: On the basis of the second survey, yes, sir.

Trial Examiner: Right.

Q. (By Mr. Mattson) Now, these surveys.

Did you have them reduced in some form or document for the Employer's use or retention? A. Yes, we have them, and they were turned over to the Union I think in one of our correspondences, not at one of the sessions.

This was a letter, by letter.

Q. Now, back in 1966, around September or so, did you discuss with employees the fact that you had a survey or knew the rates of other plants, and discuss with them the adequacy of their wage rates at your plant? A. Yes. Yes, informally.

Q. All right.

[286] And, did you indicate to these employees that this was based on your study of various other plants in the area? A. Yes, my informal survey—I have to use that—

Q. What are some of the plants that were encompassed in that informal survey that you mentioned to employees in September of 1966? A. The ones that were mentioned in the letter to the Union—C. I. Capp, Coolair, Florida Steel, Aetna Steel—people in our same type of industry—Jacksonville Shipyards.

Q. Are these the same ones that were mentioned to the employees in September of 1966? A. Roughly, yes.

Q. Now, what about the more recent survey, in which you came up with a wage offer, an increase for certain classifications?

What was that survey? What did that encompass? A. Roughly the same companies.

Q. In other words, you went back to the same companies, or you did not explore some new companies, increase your survey?

How do you mean that it was a new survey? Did you make new studies? A. We made new informal contacts with those companies to find out what their wage rates were in certain classifications, found out they'd made adjustments.

Q. I see.

[287] These adjustments.

Do you know during what year had these adjustments been made? A. Since we made our other informal survey.

Q. In other words, these adjustments had been made during the course of negotiations? A. Not necessarily.

Q. Had they been made prior to negotiations? A. Possibly.

Q. And, you were not aware of these adjustments before you went to negotiations? A. You mean the original negotiations?

Q. The original negotiations. A. We were not aware of them at the original negotiations—the adjustments, no.

Q. Would you name again some of the companies—
You remarked that the material had been furnished to the Union—or, had it been furnished your attorney for furnishing to the Union—this material on the survey? A. It was furnished to the Union through our attorney.

Everything is furnished the Union through our attorney. He's the spokesman for our group.

Q. What type of material did you provide to your attorney?

Was it a study, a cost account of various companies? What type of document did you give to your attorney? [288] A. Well, I gave him—there were two surveys—two national—I think there were area surveys conducted that we had in our possession, and also the results of our informal surveys of local companies in our same industry.

Q. You said there was both a national and a local survey result— A. Not national.

They were area surveys.

Q. How large an area? A. One, as I recall, was in— was steel foundries in the Southeast; and the other, I think, was on the Eastern Seaboard.

I don't know—they're a matter of record. I think we provided the Union with them.

Q. Now, in this area survey, about how many employers or companies would have been covered? A. In our local survey?

Q. No, the one you mentioned—the area—roughly? A. Roughly, 15.

Q. And, as far as your local survey is concerned, about how many companies? A. Roughly five, six—something like that.

Mr. Mattson: General Counsel requests that the first two page document here be marked for identification as General Counsel's No. 7;

[289] And, the second two page document be marked as General Counsel's No. 7 (a).

(Whereupon, the above referred to documents were marked as General Counsel's Exhibits Nos. 7 and 7 (a), for identification.)

Q. (By Mr. Mattson) Now, Mr. Madison, I hand you what has been marked for identification as General Counsel's Exhibit No. 7 (a), a two page document, and I ask you if that is a true copy of the letter you sent to your attorney, submitting—embodied therein, the survey requested by the Union?

(Handing document.) A. (Examining document.)

It looks similar. I think we would have to check the actual document.

Mr. Mattson: Mr. Bowden, can we perhaps stipulate that this is the letter from Mr. Madison to you?

Mr. Bowden: I think the Trial Examiner has——

Trial Examiner: These will all be subject to checking subsequently.

It may be offered now.

Mr. Mattson: May we also stipulate, Mr. Bowden, that—to keep the continuity of these documents—that General Counsel's Exhibit No. 7, the two page letter, is a true copy of your letter of August 15, 1967, to Mr. Edwards?

[290] Mr. Bowden: Yes, that is true.

Mr. Mattson: Which letter submitted the attached Madison survey letter of June 12, 1967?

Can that be so stipulated?

Mr. Bowden: Yes.

Mr. Mattson: General Counsel will then offer in evidence General Counsel's Exhibits Nos. 7 and 7 (a).

Trial Examiner: General Counsel's Exhibits Nos. 7 and 7 (a) are received.

(Thereupon, the documents previously marked as General Counsel's Exhibits Nos. 7 and 7 (a), for identification, were received in evidence.)

Q. (By Mr. Mattson) Now, Mr. Madison, looking at that document, No. 7 (a), did that encompass the area survey that you made, or was that only a portion of it?
A. (Pause.)

To my recollection, this is the major part of our survey.

Q. Now, am I correct that this is what you sent to Mr. Bowden, to furnish to the Union, pursuant to their request for the results of any area surveys—— A. Yes.

Q. —made by the Employer? A. Yes.

[291] Q. So, this would include the area survey, the local survey—the entire results? A. Yes.

Q. And, no more than this was furnished—than is represented in those two pages of No. 7 (a)? A. Not to my knowledge.

Trial Examiner: Mr. Mattson, I notice that some of the exhibits have not been submitted in duplicate.

Would you make sure before the hearing closes that the Reporter is given a duplicate of each exhibit?

Mr. Mattson: I will.

Trial Examiner: All right.

Q. (By Mr. Mattson) Mr. Madison, Mr. George Peacock testified that there was a general increase granted in the plant in the fall of 1967.

Is this correct? A. Yes.

Q. Would you give me the dates of that increase? A. I think our records show it was the first part of October—October the second, if I recall correctly.

Q. Could you confirm that later? A. Wait a minute.

Excuse me. When did you say—'66 or '67?

Q. 1967. A. '67?

[292] Q. Yes. A. Yes, that's it.

Q. Is it possible that could be in September? A. No.

Excuse me. Could I refer to my notes, or refer to my attorney?

Is that correct? Is that the date?

Q. I think for this date that I would like for you to check your notes, at this time. A. Is that all right?

Trial Examiner: Yes.

The Witness: (Examining documents.)

That date is correct, October the second, 1967.

Q. (By Mr. Mattson) And, what were the increases effected on that date? A. It was eight cents across, as I recall.

I would also like to refer to my notes. As I recall, it was eight cents across the board, with additional increases of—electric furnace operators to a top of \$3.10—wait—what is it—\$3.10?

(Pause.)

No, \$3.00 an hour.

Mr. Bowden: Your Honor, we submitted this to the Board by way of an exhibit.

If he could look at it, he could get this.

[293] The Witness: It's been subpoenaed.

Is it all right if I—

Mr. Mattson: There are only a few of these—three classifications.

The Witness: Four classifications.

Maintenance to the top rate of 2.85, as I recall; pattern makers a top rate of \$3.10 an hour; electric furnace operators, a top rate of \$3.00 an hour, and machinists a top rate of \$3.00 an hour, if my memory serves me correctly.

Q. (By Mr. Mattson) Thank you. A. Could I check my notes to make sure I'm right?

Q. You surely may.

Trial Examiner: The precise amount of the increase is that important?

Mr. Mattson: I think at this time we might as well have it in the record, if we may.

The Witness: Excuse me.

(Examining documents.)

Can I read them off to you?

Q. (By Mr. Mattson) If you will read them off to me?

A. Electric furnace operators, top rate of \$3.00 an hour; machinists, top rate of \$3.00 an hour; maintenance men,

top rate of \$2.85 an hour; pattern makers, top rate of \$3.10 an hour.

All other job classifications increased eight cents per hour.

[294] Q. Thank you.

Now, prior to that increase, had there been—

At what date was it decided that you were going to put in these increases, how long before the increases were actually effected? A. I'd say the latter part of the week, probably, prior to October second.

Q. Prior to that time, had there been any notice on the bulletin boards in the plant to the effect—notifying the employees that the Employer could not put in wage increases that it would be unlawful in any way—or, words to that effect? A. Yes.

Q. Do you have a copy of that with you, that notice? A. I think I do.

Q. Would you check your papers? A. (Examining documents.)

We could probably get it.

Q. Well, if you will bring it in at a later time, we will not delay the hearing now.

Thank you, Mr. Madison. A. All right.

Q. Now, how long had that notice been in the plant? A. As I say, I didn't find a copy of it; I'd say it had been put up—what—six weeks prior to that—something like that.

[295] I don't know—a month or so prior.

Q. And, for what reason was it removed? A. Was it removed?

Q. What was the reason for removing that notice from the board? A. For removing it from the bulletin board? In other words, why it isn't there today?

Q. Yes.

At the time it was removed, what was the reason for removing it? A. I guess just to make room for some other material on the bulletin board.

I don't know of any specific reason it was removed from——

Q. I see.

Now, as to these wage increases that you granted on October 2, 1967, who made the decision to put these wage increases into effect? A. Who made the decision?

Q. Was it a joint decision between several officers, or a single decision? A. The members of our executive committee made the decision.

Q. And, you say that this was made about the latter part of the week prior? [296] A. Approximately.

Q. And, who was on that committee? A. On our executive committee?

Q. Yes. A. Mr. Willard H. Pearsall, Jr., myself, Mr. Thomas W. Peacock and Mr. Franklin G. Russell.

And, this was granted with the approval of our attorney.

Q. Was Mr. George Peacock consulted on this in any way, Mr. Madison? A. No.

Q. Was he advised as to why you were putting them into effect? A. Yes.

Q. What did you tell him? A. What did we tell him?

Q. What did you tell Mr. Peacock? A. We told him we were going to put these rates into effect.

Q. Yes.

I asked you if you told him why, and you said yes, and I then asked you what it was that you told him. A. Because we figured that we had reached an impasse with the Union, and that we were at a competitive disadvantage in the local labor market, and we felt compelled to put this wage adjustment into effect.

[297] Q. You just mentioned—I think you said, “We figured we had reached an impasse——” A. Yes.

Q. Where was this decision made—in this discussion of the executive committee? A. With our attorney, in consultation with our attorney.

Q. Oh, he was present at the time? A. No, no, no.

Q. Did you consult your attorney after this meeting of the executive committee, or before? A. After the meeting of the executive committee, to seek his approval.

Q. But, your decision was made, then, prior to seeking legal— A. It would only be implemented on legal—if we got our approval from our attorney.

Q. Yes, I am not trying to get into privileged communications.

I am trying to avoid that. A. All right.

Q. Now, at this executive committee—was this meeting called for the purpose of discussing increases in wage rates, or— A. Specifically?

Q. Yes. [298] A. Not necessarily.

Q. Did the subject of the wage rates just arise at this meeting? A. No.

Q. Who brought it up? A. Which individual brought it up?

Q. Yes. A. I can't recall.

Q. But, the meeting was not called specifically to plan a wage increase? A. Not that I recall, necessarily.

We have periodic meetings of our executive committee.

Q. And, it came up during the course of this meeting, the subject of wage rates? A. Yes.

Q. And, you do not recall who brought this up? A. Not necessarily.

Q. But, one of the officers did bring up the subject, and what was said about it?

How did the subject arise, to the best of your memory, Mr. Madison? A. Well, it came up in connection with our competitive disadvantage in the local labor market.

We were having trouble seeking employees, and more particularly, in these four classifications—it was becoming [299] critical.

Q. Was this the major import—as you say, the four critical classifications—this was the most important reason for the decision? A. No, the four—the four classifications were more critical than the others.

However, we were having trouble getting employees, general employees, in addition to these four classifications.

Q. You mean the ones at the eight cent level? A. Yes.

Q. Had this trouble been going on for some months? A. Yes.

Q. Had it been going on for over six months? A. Not necessarily.

Q. Did you do this because—

Well, did you have a shortage of personnel? A. No.

Q. Perhaps I do not understand your answer. I think you indicated that you felt there was trouble in obtaining employees in these classifications, but you had no shortage of personnel.

How do you explain this?

How do you explain what appears to be a conflict? A. Well, let's say the caliber of applicants for jobs wasn't what we felt it should be.

[300] Q. In which category? A. All those—the categories that I gave you—four classifications and the others, the general classifications.

Q. And, you felt that by these increases you could get a higher caliber of employee? A. We thought so.

Q. Would you say that this was one of the primary reasons for deciding to put these increases into effect at that meeting? A. The prim—

Q. The primary reason for deciding that you wanted to put these wage increases into effect? A. Yes.

To try to attract better personnel—is that right, if I—

Q. Yes. A. —understand you correctly.

Q. That was the reasoning behind your decision? A. Yes, yes.

Q. At that meeting, were the amounts of the increases—is this where the decision was made, as to the amounts that would be granted? A. No, no.

Q. Was there some talk about the amounts? A. Yes.

[301] Q. At this meeting? A. Yes.

Q. Which one of the amounts was discussed? A. All of the amounts.

Q. At that meeting? A. Yes.

Q. All right.

What was the decision at that meeting, at that time, as to the amount for the across the board increase?

What did they decide at that meeting? What did they decide as to how much you wanted to give them? A. We decided to go the eight cents per hour for all but the four classifications.

Q. Were any other amounts discussed and the pros and cons of the amounts? A. No, not at that meeting.

Q. How about the electric furnace operator, the three dollars—three dollars for the top? A. Yes.

Q. What amount was contemplated at this meeting? A. That amount.

Q. Did you discuss any other amount? A. No.

Q. How about the maintenance men, the top of \$2.85?

What amount was contemplated at this meeting? [302]
A. Top of \$2.85.

Q. Was any other amount discussed? A. No.

Q. How about the pattern makers—\$3.10 per hour? Was that amount discussed? A. Yes.

Q. Were there different rates suggested? A. No.

Q. What was the decision at that meeting, as to the amount you felt was—you would want to increase? A. The amount that we so increased on October second.

Q. And, machinists—\$3.00.

Was that the only amount discussed? A. Yes.

Q. Was there any discussion as to whether increases should be less or more, at all, during this meeting? A. Whether they should be less or more?

Q. Yes. A. Yes, it was discussed, generally, but not specifically on all those categories that you pointed out.

Q. But, there was discussion then, not—not just one amount, there was discussion on various categories? A. Should we go any more than we had offered at the Union negotiations, yes, that was discussed.

Q. What was the decision? [303] A. To implement the increases that we so did on October the second, pending approval from our attorney.

Q. Was there any discussion as to implementing a smaller wage scale than you have indicated? A. No.

Q. But, you did discuss whether you should go more than this? A. Yes.

Q. Now, this was the first meeting at which the wage rates were discussed—the wage increases—this meeting you talk about, the latter part of the week prior to promulgating these wage increases, or effecting them?

That was the first time? A. Wait a minute.

I don't understand you.

Q. Is this the very first time, then, that the Company decided that they wanted to raise their rates, had a discussion for the purpose of raising their rates? A. Was this the first time we discussed raising the rates?

Q. Yes. A. No.

Q. Among yourselves—I mean, among the Employer, only. I am not talking about negotiations, now. A. Oh, no, no.

[304] Q. Had you had prior meetings? A. Oh, yes, prior to offering it as part of our negotiations.

Q. Now, I am correct, am I not, that at this meeting no Union representative was present? A. At our executive committee meeting?

Q. Yes. A. No, there was not.

Q. And, as of this time, you at no time had notified the Union that you wanted to do this?

Am I correct? A. That we wanted to do this?

We notified them in our bargaining session that covered whatever bargaining session that was—said that we would like to put in these rates.

I'm not sure which session it was. I could check my notes and let you know.

Q. Is it your testimony that these are the rates that you offered the Union during negotiations, the exact rates? A. Yes.

Q. Is there any variation, whatsoever? A. No.

Q. But, at no time prior to this meeting did the Union ever authorize you to unilaterally, on your own, increase these rates, did they? [305] A. No, not to my knowledge.

Q. And, to your knowledge, at no time was the Union notified, prior to October 2, 1967, that these rates were going to be put into effect? A. We notified them that we would like to put them into effect at whatever bargaining session covered that.

I'm not sure which one it is.

Trial Examiner: Well, the last bargaining session was on August 7.

The Witness: It was prior to that.

Trial Examiner: When you made your decision shortly before October 2 to give these wage increases, the question, as I understand it, and your answer, as I understand it,

was that the Union was not notified that you were putting these increases into effect, before you did put them into effect.

The Witness: No, that's right.

Trial Examiner: And, you did not tell them thereafter?

The Witness: No, sir.

We had no bargaining sessions after August the seventh.

Q. (By Mr. Mattson) So, if I am correct, at the time you put these into effect, October 2, 1967, the Union was not aware of this, to your knowledge?

Is that correct? A. That's right.

Q. All right.

[306] And, they did not approve or authorize this? A. Not that I know of.

Q. And, you made no effort from the date of that executive meeting to ask the Union if you could put these rates into effect? A. (Shakes head negatively.)

Q. Is your answer no? A. No.

Q. Under your Company pension plan, Mr. Madison, if an employee is terminated, does he lose all benefits that have accrued in that pension plan? A. No.

Q. Is he paid off for that? Is there some payment made when he is terminated? A. If he has a vested interest in the plan, yes.

Q. Say, a man has 15 years with the Company, or 20 years, would—— A. He would have a vested interest, yes.

Q. And, when he is terminated, for any reason, what is his vested interest, a certain amount that has been put into the plan is returned to him in pay? A. That's right, according to the formula that's in the plan.

• • • • •

[308]

WILLIAM T. EDWARDS

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

* * * * *

Direct Examination

Q. (By Mr. Mattson) Mr. Edwards, will you state your position with the Union? A. Staff representative.

Q. And, were you assigned the duty of negotiating with the Florida Machine & Foundry Company, following the Steelworkers' certification in 1966? A. I was.

Q. And, what was the first meeting you attended? Was that the meeting of— [309] A. November 28.

Q. —November 28? A. Yes.

Q. Of 1966? A. '66.

Q. Now, prior to your meeting with the Employer on that date, had the Union submitted its written contract proposals to the Employer? A. Yes, the contract had been delivered to the Company in some manner. I didn't do it, so I don't know how it was done, but it was done.

Mr. Mattson: I ask that the Reporter mark this as General Counsel's No. 8.

(Whereupon, the above-referred to document was marked as General Counsel's Exhibit No. 8, for identification.)

Q. (By Mr. Mattson) Mr. Edwards, I hand you what has been marked as General Counsel's Exhibit No. 8, for identification, and ask you if that is the Union contract proposals which had been submitted to the Company? (Handing document.) A. (Examining document.) Yes, it is.

Q. All right.

[310] Mr. Mattson: General Counsel has shown the document to Mr. Bowden.

Mr. Bowden: No objection.

Mr. Mattson: General Counsel now offers in evidence General Counsel's Exhibit No. 8.

Trial Examiner: General Counsel's Exhibit No. 8 is received.

(Whereupon, the document previously marked as General Counsel's Exhibit No. 8, for identification, was received in evidence.)

Trial Examiner: Now——

Mr. Mattson: Can we agree as to when the Company did receive this?

Mr. Bowden: Just a minute——

Mr. Mattson: What date——

Trial Examiner: I should think it would be enough for our purposes to know that the contract was received by the Company before the first negotiating session, on November 28.

Mr. Bowden: I think it was around October 10, if I'm not mistaken.

Mr. Mattson: Of 1966.

Mr. Bowden: Yes.

Mr. Mattson: I would so stipulate.

Trial Examiner: All right.

[311] The stipulation that the contract was received by the Company on about October 10 is noted.

Mr. Mattson: May I have one minute, now, please, to put back some documents?

Trial Examiner: All right.

Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Mattson: I would request that this document be marked as General Counsel's Exhibit No. 9, for identification, please.

(Whereupon, the above-referred to document was marked as General Counsel's Exhibit No. 9, for identification.)

Mr. Mattson: This is the Employer's contract proposal. General Counsel proposes by way of stipulation that General Counsel's Exhibit No. 9 be received in evidence, as the Employer's contract proposals.

Mr. Bowden: That is General Counsel's Exhibit No. 9, did you say?

Trial Examiner: No. 9.

Mr. Mattson: Yes, sir.

This was presented to the Union at the meeting of December 19, 1966.

[312] Mr. Bowden: December 19?

Mr. Mattson: Can we stipulate to that, Mr. Bowden?

Mr. Bowden: Yes, we can.

Trial Examiner: The stipulation is noted.

And, you are now offering General Counsel's Exhibit No. 9?

Mr. Mattson: Yes, sir.

Trial Examiner: General Counsel's Exhibit No. 9 is received.

(Whereupon, the document previously marked as General Counsel's Exhibit No. 9, for identification, was received in evidence.)

Mr. Mattson: Thank you, sir.

General Counsel would request that the Reporter mark this document as General Counsel's Exhibit No. 10, for identification.

(Whereupon, the above-referred to document was marked General Counsel's Exhibit No. 10, for identification.)

Mr. Mattson: And, this document as General Counsel's Exhibit No. 11.

(Whereupon, the above-referred to document was marked General Counsel's Exhibit No. 11, for identification.)

Mr. Mattson: I would propose to enter that by way of [313] stipulation, as the grievance and seniority proposals, proposed by the Union on January 25.

Mr. Bowden: All right.

Mr. Mattson: General Counsel has submitted to Mr. Bowden for his inspection General Counsel's Exhibit No. 10, for identification, which is entitled, "Seniority," a five page document, with the stipulation to indicate that this Seniority provision or proposal was prepared by the Union and was submitted to the Employer on January 25, 1967;

And, General Counsel's Exhibit No. 11, for identification, a one page document, entitled, "Grievance Procedure," the stipulation to indicate that this was a proposed Grievance Procedure drafted by the Union, and also submitted to the Employer on January 25, 1967.

I offer these in evidence.

Mr. Bowden: No objection.

Trial Examiner: All right.
Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Mattson: I would request that this document be marked as General Counsel's Exhibit No. 9, for identification, please.

(Whereupon, the above-referred to document was marked as General Counsel's Exhibit No. 9, for identification.)

Mr. Mattson: This is the Employer's contract proposal. General Counsel proposes by way of stipulation that General Counsel's Exhibit No. 9 be received in evidence, as the Employer's contract proposals.

Mr. Bowden: That is General Counsel's Exhibit No. 9, did you say?

Trial Examiner: No. 9.

Mr. Mattson: Yes, sir.

This was presented to the Union at the meeting of December 19, 1966.

[312] Mr. Bowden: December 19?

Mr. Mattson: Can we stipulate to that, Mr. Bowden?

Mr. Bowden: Yes, we can.

Trial Examiner: The stipulation is noted.

And, you are now offering General Counsel's Exhibit No. 9?

Mr. Mattson: Yes, sir.

Trial Examiner: General Counsel's Exhibit No. 9 is received.

Trial Examiner: General Counsel's Exhibits Nos. 10 and 11 are received.

(Whereupon, the documents previously marked as General Counsel's Exhibits Nos. 10 and 11, for identification, were received in evidence.)

Mr. Mattson: I will request this document be marked General Counsel's Exhibit No. 12, for identification.

[314] (Whereupon, the above-referred to document was marked as General Counsel's Exhibit No. 12, for identification.)

Mr. Mattson: General Counsel offers, by way of stipulation, the one page document entitled, "Seniority," submitted on 2/7/67, the stipulation to further indicate that this was a redraft proposal prepared by the Union on that date, and submitted to the Company.

Mr. Bowden: No objection.

Trial Examiner: General Counsel's Exhibit No. 12 is received.

(Whereupon, the document previously marked as General Counsel's Exhibit No. 12, for identification, was received in evidence.)

Mr. Mattson: General Counsel requests a document be marked as General Counsel's Exhibit No. 13, for identification.

(Whereupon, the above-referred to document was marked as General Counsel's Exhibit No. 13, for identification.)

Mr. Bowden: Are you going to put in the answer to these letters?

Mr. Mattson: Yes, if we have anything missing, let me know.

Trial Examiner: General Counsel's Exhibits Nos. 10 and 11 are received.

(Whereupon, the documents previously marked as General Counsel's Exhibits Nos. 10 and 11, for identification, were received in evidence.)

Mr. Mattson: I will request this document be marked General Counsel's Exhibit No. 12, for identification.

[314] (Whereupon, the above-referred to document was marked as General Counsel's Exhibit No. 12, for identification.)

Mr. Mattson: General Counsel offers, by way of stipulation, the one page document entitled, "Seniority," submitted on 2/7/67, the stipulation to further indicate that this was a redraft proposal prepared by the Union on that date, and submitted to the Company.

Mr. Bowden: No objection.

Trial Examiner: General Counsel's Exhibit No. 12 is received.

(Whereupon, the document previously marked as General Counsel's Exhibit No. 12, for identification, was received in evidence.)

Mr. Mattson: General Counsel requests a document be marked as General Counsel's Exhibit No. 13, for identification.

(Whereupon, the above-referred to document was marked as General Counsel's Exhibit No. 13, for identification.)

Mr. Bowden: Are you going to put in the answer to these letters?

Mr. Mattson: Yes, if we have anything missing, let me know.

Mr. Bowden: All right.
[315] No objection.

Mr. Mattson: General Counsel proposes to stipulate receipt of General Counsel's Exhibit No. 13 into evidence, as the true copy of the Union letter of March 1, 1967, to employer's Counsel, Mr. Bowden.

Trial Examiner: General Counsel's Exhibit No. 13 is received.

(Whereupon, the document previously marked as General Counsel's Exhibit No. 13, for identification, was received in evidence.)

Mr. Mattson: General Counsel requests that a document be marked as General Counsel's Exhibit No. 14, for identification.

(Whereupon, the above-referred to document was marked as General Counsel's Exhibit No. 14, for identification.)

Mr. Mattson: General Counsel proposes that General Counsel's Exhibit No. 14 be received in evidence as a true copy of Mr. Bowden's letter to Mr. Edwards, dated March 6, 1967.

Mr. Bowden: All right.

Trial Examiner: General Counsel's Exhibit No. 14 is received.

[316] (Whereupon, the document previously marked as General Counsel's Exhibit No. 14, for identification, was received in evidence.)

Mr. Mattson: General Counsel requests that this document be marked as General Counsel's Exhibit No. 15, for identification.

(Whereupon, the above referred to document was marked as General Counsel's Exhibit No. 15, for identification.)

Mr. Bowden: No objection.

Mr. Mattson: General Counsel offers General Counsel's Exhibit No. 15——

Mr. Bowden: No objection.

Mr. Mattson: ——by stipulation.

Trial Examiner: What is it?

Would you identify it?

Mr. Mattson: I beg your pardon.

This is a letter from Mr. Edwards of the Union, to Mr. Bowden, dated March 21, 1967.

Trial Examiner: All right.

General Counsel's Exhibit No. 15 is received.

(Whereupon, the document previously marked as General Counsel's Exhibit No. 15, for identification, was received in evidence.)

[317] Mr. Mattson: General Counsel would request that this be marked for identification as General Counsel's Exhibit No. 16.

(Whereupon, the above referred to document was marked as General Counsel's Exhibit No. 16, for identification.)

Mr. Mattson: General Counsel proposes by stipulation that General Counsel's Exhibit No. 16 be received in evidence, as true copies of Mr. Bowden's letter to Mr. Edwards, dated March 28, 1967.

Trial Examiner: General Counsel's Exhibit No. 16 is received.

(Whereupon, the document previously marked as General Counsel's Exhibit No. 16, for identification, was received in evidence.)

Mr. Mattson: I would request that this be marked as General Counsel's Exhibit No. 17, for identification.

(Whereupon, the above referred to document was marked as General Counsel's Exhibit No. 17, for identification.)

Mr. Bowden: Is this April 3?

Mr. Mattson: April 3, right.

General Counsel offers General Counsel's Exhibit No. 17 in evidence, by stipulation of the parties, as true copies of Mr. Edwards' letter to Mr. Bowden, dated April 3, 1967.

[318] Mr. Bowden: No objection.

Trial Examiner: General Counsel's Exhibit No. 17 is received.

(Whereupon, the document previously marked as General Counsel's Exhibit No. 17, for identification, was received in evidence.)

Mr. Mattson: General Counsel would request that this document be marked as General Counsel's Exhibit No. 18, for identification.

(Whereupon, the above referred to document was marked as General Counsel's Exhibit No. 18, for identification.)

Mr. Mattson: General Counsel offers General Counsel's Exhibit No. 18 in evidence, by stipulation of the parties, as a true copy of Mr. Bowden's letter to Mr. Edwards, dated April 7, 1967.

Mr. Bowden: Right.

Trial Examiner: General Counsel's Exhibit No. 18 is received.

(Whereupon, the document previously marked as General Counsel's Exhibit No. 18, for identification, was received in evidence.)

Mr. Mattson: General Counsel would request that this be marked for identification as General Counsel's Exhibit No. 19.

[319] (Whereupon, the above referred to document was marked as General Counsel's Exhibit No. 19, for identification.)

Mr. Bowden: All right.

Mr. Mattson: General Counsel offers in evidence by stipulation of the parties General Counsel's Exhibit No. 19, for identification, as a true copy of Mr. Edwards' letter to Mr. Bowden, dated April 11, 1967.

Trial Examiner: General Counsel's Exhibit No. 19 is received.

(Whereupon, the document previously marked as General Counsel's Exhibit No. 19, for identification, was received in evidence.)

Trial Examiner: Excuse me, Mr. Mattson.
Off the record.

(Discussion off the record.)

Trial Examiner: On the record.
Go ahead, Mr. Mattson.

Mr. Mattson: By stipulation of the parties, General Counsel offers in evidence as true copies, General Counsel's Exhibit No. 20, a letter from Mr. Bowden to Mr. Edwards, dated April 14, 1967.

Mr. Bowden: All right.

[320] (Whereupon, the above-referred to document was marked as General Counsel's Exhibit No. 20, for identification.)

Trial Examiner: General Counsel's Exhibit No. 20 is received.

(Whereupon, the document previously marked as General Counsel's Exhibit No. 20, for identification, was received in evidence.)

Mr. Mattson: Also, General Counsel's Exhibit No. 21, for identification, a letter dated May 31, 1967, from Union Representative Nash to Mr. Bowden.

(Whereupon, the above-referred to document was marked as General Counsel's Exhibit No. 21, for identification.)

Mr. Bowden: All right.

Trial Examiner: General Counsel's Exhibit No. 21 is received.

(Whereupon, the document previously marked as General Counsel's Exhibit No. 21, for identification, was received in evidence.)

Mr. Mattson: Also, General Counsel's Exhibit No. 22, a letter to Mr. Nash, from Mr. Bowden, dated June 7, 1967.

[321] (Whereupon, the above-referred to document was marked as General Counsel's Exhibit No. 22, for identification.)

Mr. Bowden: Right.

Trial Examiner: General Counsel's Exhibit No. 22 is received.

(Whereupon, the document previously marked as General Counsel's Exhibit No. 22, for identification, was received in evidence.)

Mr. Mattson: Also, General Counsel's Exhibit No. 23, a letter from Mr. Edwards to Mr. Bowden, dated July 27, 1967.

(Whereupon, the above-referred to document was marked as General Counsel's Exhibit No. 23, for identification.)

Mr. Bowden: Right.

Trial Examiner: General Counsel's Exhibit No. 23 is received.

(Whereupon, the document previously marked as General Counsel's Exhibit No. 23, for identification, was received in evidence.)

Mr. Mattson: Also, General Counsel's Exhibit No. 24, for identification, a letter from Mr. Bowden to Mr. Edwards, dated July 31, 1967.

[322] (Whereupon, the above-referred to document was marked as General Counsel's Exhibit No. 24, for identification.)

Mr. Bowden: Right.

Trial Examiner: General Counsel's Exhibit No. 24 is received.

(Whereupon, the document previously marked as General Counsel's Exhibit No. 24, for identification, was received in evidence.)

Mr. Mattson: And, General Counsel's Exhibit No. 25, for identification, a letter from Mr. Edwards to Mr. Bowden, dated August 8, 1967.

(Whereupon, the above-referred to document was marked as General Counsel's Exhibit No. 25, for identification.)

Mr. Bowden: Right.

Trial Examiner: General Counsel's Exhibit No. 25 is received.

(Whereupon, the document previously marked as General Counsel's Exhibit No. 25, for identification, was received in evidence.)

Mr. Mattson: And, for the record, I would note, Your Honor, that a letter is already in evidence, as General Counsel's Exhibit No. 7, which is a letter from Mr. Bowden [323] to Mr. Edwards, which is in effect, I believe, a response to either Mr. Edwards' August 8 letter—

Mr. Bowden: General Counsel's Exhibit No. 25.

Mr. Mattson: —General Counsel's Exhibit No. 25, yes.

Mr. Bowden: Right.

• • • • •

[324] Mr. Mattson: Now, am I correct, Mr. Bowden, that you would like to have these in evidence?

Mr. Bowden: Yes, I think that it might shorten up the hearing, if we could do that.

Mr. Mattson: And, did I state this correctly, that these are typewritten resumes made from the notes taken by the—

Mr. Bowden: Immediately following each individual meeting.

Mr. Mattson: —Employer?

Mr. Bowden: Immediately following each individual meeting.

• • • • •

Mr. Bowden, would you care to offer those Respondent's exhibits, the summaries of the 10 bargaining negotiating sessions, the summaries that were prepared immediately following these meetings?

Mr. Bowden: Yes, sir, we would.

Actually there would be 11, one of which was a summary of the minutes of the first meeting, which are necessarily— [325] there is not much in there—there is one statement that we would like to remove. While it is our understanding, we cannot prove this, so we will remove this one statement.

But, it is a record of—there was a meeting which was supposed to have been held, and the people were there, with the exception of those——

Trial Examiner: This is the October 28——

Mr. Bowden: October 27.

Trial Examiner: October 27?

Mr. Bowden: Yes.

Trial Examiner: Well, that would make it 11?

Mr. Bowden: Yes.

All right, sir, we will be happy to do that, if you want to go off the record now, and we will get them together and introduce them.

We have them and we have to separate them, you see.

Trial Examiner: All right.

We will go off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Bowden: Your Honor, at this time, I would like to introduce as Respondent's Exhibits Nos. 1 through 11 two copies of the Company's records of the various Union meetings, copies of which I have furnished the General Counsel, [326] and——

Trial Examiner: These are in chronological order, beginning with October 27, 1966, and ending with August 7, 1967?

Mr. Bowden: That is correct.

Trial Examiner: And, those have been marked Respondent's Exhibits Nos. 1 through 11?

Mr. Bowden: Correct.

(Whereupon, the above referred to documents were marked as Respondent's Exhibits Nos. 1 through 11, for identification.)

Trial Examiner: All right.

Respondent's Exhibits Nos. 1 through 11—

Well, before I receive them, will you, Mr. Bowden, describe just what these exhibits are?

Mr. Bowden: All right, sir.

These exhibits are the—a record by the Company negotiating committee, which was made immediately upon the conclusion of each session.

They show the date, the place, who attended, and general comments and the subject matter of the proposals.

Trial Examiner: Are they based on notes taken during the meetings?

Mr. Bowden: Yes, sir.

[327] Trial Examiner: There were notes taken during the meetings?

Mr. Bowden: Yes, sir.

Trial Examiner: And, the summary was made up from those notes?

Mr. Bowden: Typewritten, for easy reference.

Trial Examiner: Did more than one Company representative take notes in the meetings?

Mr. Bowden: Yes, sir.

Trial Examiner: And, they were compared afterwards?

Mr. Bowden: Yes, they jointly compared their notes and prepared the notes of this meeting, which I am attempting to introduce here, immediately upon the conclusion of each session.

Trial Examiner: Now, the notes that were taken are notes—they are not verbatim accounts?

Mr. Bowden: No, sir, they are not.

In fact, in places you will find that they are cryptic, in which it just refers to something being discussed.

Trial Examiner: All right.

In other words, they are being introduced as just more or less a general guide to the sessions, with the hope that they do cover most of the main—if not all of the meetings' main points.

Is that it?

[328] Mr. Bowden: Yes, sir.

I might add that we, during our side of this case, will amplify some of these notes, and I assume the General Counsel will also do so.

Trial Examiner: Mr. Mattson, do you have any comment on this?

Mr. Mattson: For the purpose indicated, and not for the truth or falsity of the facts stated therein, which the General Counsel may wish to contend——

Trial Examiner: All right.

They will be received, with that reservation, that they will be something to evaluate the testimony that is given, or at least, to the extent that they are not challenged, or if there are any further stipulations as to them, that they are acceptable to both parties, or all parties.

Well, Respondent's Exhibits Nos. 1 through 11, then, are received, with that understanding.

(Whereupon, the documents previously marked as Respondent's Exhibits Nos. 1 through 11, for identification, were received in evidence.)

Trial Examiner: You may continue now, Mr. Mattson, with your examination of Mr. Edwards.

Mr. Mattson: Thank you, sir.

Q. (By Mr. Mattson) Mr. Edwards, I hand you what has been [329] marked as—has been received in evidence as Respondent's Exhibit No. 2.

(Handing document.)

You were in the room, and you heard the discussion as to what this document represents, a resume of some notes taken by the Employer at the November 28 meeting.

Now, if you will glance at that Respondent's Exhibit No. 2, and Paragraph No. 1 indicates that the meeting was held on November 28 at the Seminole Hotel, at 2:00 o'clock p. m.

Is that correct? A. (Examining document.)

That's correct.

Q. In attendance for the Union were yourself and an employee committee, as named there, of four.

Is that right? A. That is true.

These are the people who were present.

Q. Those people named there, above your name, those are employees of Florida Machine & Foundry, and are the employee negotiating committee? A. That's correct.

Q. Underneath, the Company representatives, Mr. Bowden, Madison, Peacock and Pearsall? A. Those are the people I recall being present.

[330] Q. Now, turning to Paragraph III, it says, "General: Edwards made statement rates were suggested by Pittsburgh." A. That is not quite accurate.

Q. Do you recall what you said? A. Yes, generally.

Mr. Bowden had asked where the Union—how the Union had arrived at the wage proposal that it made, these wage rates, and I didn't propose—rather, I didn't prepare the contract, and so, I gave an answer, which generally our staff—the procedures that our staff usually follows in making a wage proposal.

We do have contracts in Pittsburgh, with many metal fabricating companies and foundries, and of course, those rates are available to us, if we request them.

I further made mention of Pittsburgh, in stating that we have a research department that can give us a pretty accurate picture of the Company's financial posture, but I didn't say that these rates were suggested by Pittsburgh, if that means that Pittsburgh sent down a list of rates for us to propose.

Q. Now, I think you mentioned the financial status, and perhaps that reflects on this Subparagraph B, where it says:

"Edwards said they requested information from their [331] economics department in Pittsburgh . . ."? A. Yes, we had written Pittsburgh, the research department, to ask about the financial strength of the Company, but—

(Pause.)

Q. All right.

Now, in Subparagraph C, you will note that it indicates that Edwards stated in effect that the Company should pay the same labor rates, making specific reference to Northern communities. A. I don't believe I referred exclusively to Northern communities.

I had stated that we were concerned with the low rates of pay in the plant, and that these rates of pay were not responsive to the employees' needs, and inasmuch as they pay national prices for the materials that they buy in the market, that I felt—the Union felt that they should be paid more in line with national average wages.

But, I don't believe I singled out Northern communities.

Q. Now, I notice that this document does not indicate any area of agreement reached at this meeting.

Were there any areas of agreement reached? A. Yes. There were a few areas of agreement reached.

[332] Q. Now, if I may stop you there. A. Okay.

Q. I will hand you perhaps a contract, and it might be easier for you to run over that.

.

Q. Mr. Edwards, in the meeting of November 28, when you arrived at the meeting, what took place, briefly, at the outset? A. The Union committee arrived at two o'clock—or, before two o'clock, and the Company about the same time.

And, Mr. Bowden said that he wanted to ask a few questions about our proposal, that there were some areas he didn't quite understand.

[333] And, we then went through the Union proposal, article by article.

Q. All right.

Now, as you went along, article by article, and if you will take the contract you have, we will see if there was any agreement.

On the preamble, what was the Employer's position on that? A. (Examining document.)

As I recall, Mr. Bowden indicated that the successor language would not be satisfactory.

Q. Did he say why? A. I believe he said either at this meeting or at the next one I attended that the successor clause had a way of getting into—getting into the way of a sale, and that he would not like to encumber the Company with a successor clause, for that reason.

Q. Did you inquire, either at this meeting or the next, whether they had any plans to sell, or— A. No, I don't recall asking that question.

Q. All right.

He did not say that they had any such plans? A. No, he didn't say they had any plans.

Q. Now, Article I, Recognition? A. That was agreed to—the entire article was agreed to.

[334] Mr. Bowden indicated that he would agree to that.

Q. Article II, Intent and Purpose? A. Mr. Bowden wanted to skip that.

Q. Article III, Management Prerogatives? A. Mr. Bowden said that he would be proposing something on that—management's rights.

However, in Article 3.2, he stated that he thought a 30 day probationary period was too short, and that the Company needed a little more time to evaluate a new employee than that.

And, inasmuch as they had some skills there at work, I suggested 60 days, and Mr. Bowden indicated that that would—he indicated that that might be all right.

Q. Was that your 3.3 now?

Mr. Bowden: That was 3.2 he was talking about.

The Witness: That was 3.2.

Q. (By Mr. Mattson) What about your 3.3? A. 3.3?

Q. Yes. A. Mr. Bowden agreed to that language. He wanted to skip check-off, the entire article.

Trial Examiner: Perhaps Mr. Edwards could give us a running summary as he goes through the contract?

Mr. Mattson: Fine.

[335] The Witness: Article V—Mr. Bowden skipped most of this.

He did ask a question about the overtime distribution in 5.4. His suggestion ought to be overtime, if it were going to be distributed, that it should be distributed among the employees who performed the work.

And, I agreed with him that that probably should be true.

Q. (By Mr. Mattson) How about 5.5? A. 5.5 he agreed to.

On 5.6—he requested we skip that.

There was discussion on Article VI, Premium Days, with Mr. Bowden skipping most of it.

On the last paragraph of that article——

Trial Examiner: That is 6.3 (c).

The Witness: Yes, (c).

Mr. Bowden agreed to the paragraph, with the exception of number of holidays. He agreed to the language of the paragraph.

He requested we skip Article VII, and that we skip Article VIII—1, 2, 3, 4—he agreed to 8.5. skipped 8.6, agreed to 8.7.

Article IX, Transfers and Job Vacancies—he requested we skip that.

(Pause.)

[336] Article X is, of course, where the discussion about wage rates ensued, Mr. Bowden asking us if we had checked the Jacksonville area rates, and I believe I advised him that was one of our major problems—by “our,” the working people of—the Union, that the Jacksonville rates were substandard.

And, Mr. Bowden said that the Company had to compete in the Jacksonville labor market, and they were paying a good wage.

And, I asked him how he would compete—how he would compete more poorly if he gave raises, and I don’t recall his answer to that.

On Seniority, Mr. Bowden said that they would have a counterproposal to make on Seniority, and I think there was some discussion about it, but not too much.

Q. (By Mr. Mattson) Was anything said about superseniority? A. As I recall, Mr. Bowden did point out that they would not agree to superseniority—preferential seniority for local Union officers.

And again, there was some discussion on Grievance Procedure, but Mr. Bowden said that they would have a proposal to make on that, so we didn't talk about it very much.

Article XIII, Discharge, Mr. Bowden agreed to both paragraphs of that article.

Article XIV, No Strikes or Lockouts—Mr. Bowden said [337] that the Company would make a counterproposal on that.

On Bulletin Boards, Mr. Bowden agreed to that article.

Article XVI, Leave of Absence, Mr. Bowden agreed to 16.1, 2, 3, 4, and asked to hold on 16.5 and 16.6.

Oh, there was some discussion on 16.6, and Mr. Bowden suggested that we use in the last line—and, I quote—

“ . . . unless he has a valid and acceptable excuse for not so reporting,” that if we would add the words, “and acceptable,” that we could have an agreement there, and I agreed to add those words.

Article XVII, Safety and Health—there was some discussion on that, and it was held for a counterproposal.

On Article XVIII, Jury Duty Pay, Mr. Bowden said the Company could not agree to that.

A similar answer regarding Article XIX, Pensions, that the Company would not agree to that.

Article XX—Mr. Bowden asked that we skip that.

There was some discussion, very brief discussion, on Insurance and Hospitalization, and Mr. Bowden said that the Company had an insurance plan. We just skipped that article with that much of a discussion.

Article XX, Severance Allowance—Article XXII, rather, Severance Allowance—Mr. Bowden said that the Company did not agree to that.

[338] Article XXIII—I have no comment by the Company, at all, on that, so it was skipped.

Duration—I told Mr. Bowden that we were proposing a one year agreement, and he made no comment.

* * * * *

[339] Q. (By Mr. Mattson) I think you have gone over the proposal with the company. Did the Employer indicate what they would do with respect to their proposals or your proposals? A. Well, Mr. Bowden said he would submit a written counterproposal, said he thought that he understood what we were saying, and that he would prepare a counterproposal.

Q. Was anything said at the end of this meeting, about later meetings, when they should be held? A. Yes. I urged the Company to meet as soon as possible, preferably in a succession of days, so the negotiations would have some consistency and flow. I urged that negotiations continue quickly, as quickly as possible.

Q. What was the Employer's response? A. Mr. Bowden said he had a busy schedule, and he checked his calendar, and said the earliest date he could meet with us would be December the 19th. I objected to it, and said that that was too much time involved, and we would like to proceed to try to get an agreement.

Q. What did he say? A. He said—he just said that he couldn't make it, he had [340] commitments which didn't permit it, and the earliest he could meet with us would be the 19th.

* * * * *

Cross-Examination

Q. (By Mr. Bowden) Mr. Edwards, at this meeting, which is meeting No. 2, and which is reflected in Re-

spondent's Exhibit No. 2, at that meeting you also requested information from us to be furnished to you before the next negotiations. Isn't that correct? A. That's true.

Q. At that time, was not the agreement for the next meeting based upon the fact that the Company had to then present its own proposal for presentation to you at the next meeting? A. You said you had to make up a counterproposal.

Q. Yes. A. I think, Mr. Bowden, you will recall that I reminded you that you'd had our proposal for some time.

Q. And, I am assuming that you will recall that we told [341] you that we had had a meeting before this scheduled, too, and that no representative of the Union showed up, did we not?

Mr. Mattson: I object to the irrelevancy of this question.

Trial Examiner: The objection is overruled.

The Witness: I believe you did mention that to me, that there had been an earlier scheduled meeting that had not worked out.

Q. (By Mr. Bowden) Do you recall if I asked you at this meeting if you had any idea of the cost involved in your economic part of your proposal? A. No, I don't recall. I don't recall you asking me.

Q. Do you recall any conversation in which we advised you that the economic cost of your proposal was in the neighborhood of \$500,000? A. No, I don't recall that.

Q. Do you recall when we told you or advised you of what the cost of each cent of economics meant to the Company, per cent? A. Of each cent?

Q. Cent, yes, each cent increase meant to the Company? A. Mr. Bowden, you might've told me, but I don't recall the figure that you used.

[342] Q. Do you recall a figure of around \$6,000 per cent of increase? A. No, I don't.

Q. You do not recall that? A. No.

Q. Did not that conversation occur at a time when we asked you where you obtained the amount of increase you suggested, which was around 50 cents an hour, as I recall? A. I think that was your estimate, of 50 cents. I do believe that you did make that estimate.

Q. Mr. Edwards, I agree with your summary of the first meeting, as to the items, with the exception here of your statement in reference to 11.6. Was it your testimony that that had been agreed to? It is a minor thing, but I do not have that marked as agreed—11.6. A. (Examining document.) Well—

Q. Oh, excuse me—I have 11.6 marked as agreed. Do you recall an agreement on that Article on November 28, 1966? A. No, there was no agreement that day—on the 28th.

Q. All right, sir. You mentioned one other Article, and this would be number 16.6. You said that we had suggested the addition [343] of the words, "and acceptable," and you had agreed to that. Do your notes reflect that there was an agreement, or that was just a company proposal? A. My notes indicated an agreement.

Q. All right, sir. A. 11/28, "and acceptable"—"okay."

Q. Now, as a matter of fact, when we were discussing this proposal of yours originally, did we not, either by mutual agreement or by suggestion of the Company, pass over all economic items for the time being? A. No, you skipped most economic items, but you gave me definite "no's" on a couple, such as jury pay and severance pay, and possibly others.

Q. But, for the most part, they were skipped over—most economics, were they not? A. That's true.

Mr. Bowden: I have no further questions on that.

Redirect Examination

Q. (By Mr. Mattson) Mr. Edwards, is this the first meeting, 11/28, that you were assigned to negotiate for the Union with this Employer? A. This was the very first meeting that there had actually been a discussion on our proposal.

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[344]

WILLIAM C. McCALL

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Mr. Mattson) Will you state your capacity with the [345] Steelworkers? A. Staff representative.

Q. And, were you assigned to negotiate with the Employer here on December 19, 1966? A. Yes.

Q. Mr. McCall, I hand you what has been introduced in evidence as Respondent's Exhibit No. 3.

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Q. (By Mr. Mattson) I also hand you, Mr. McCall, a copy of General Counsel's Exhibit No. 8, the Union's agreement, and what is in evidence as General Counsel's Exhibit No. 9, the Employer's contract proposal.

(Handing documents.)

Now, prior to attending this meeting on December 19, Mr. McCall, did you take any preliminary action in preparation for this meeting? [346] A. Yes, I met with the local negotiating committee on December 10th, familiarized myself with the committee and also the proposal they had submitted to the Company.

Q. And, the meeting was scheduled for 10:00 o'clock. Were you there at that time? A. Yes, right.

Q. At the outset, what took place? A. Well, at the outset of the meeting, the Company presented a number of documents that they had been asked for by Mr. Edwards in the previous meeting, including the list, Respondent's Exhibit 3, the classification, the name, the date of employment, the rates of pay, department, age and number of dependents.

They had produced a copy of the pension plan, they produced a copy of the Company's master group insurance policy, and the Company's proposed agreement.

Q. Now, as to the contract, did you get into negotiations at that point? A. No, we asked for a recess.

We took a recess for some time to begin to look over this proposal, because this was coming out of a clear sky here. I didn't know what they had in it, so we asked for a recess to study this for some time.

Q. Was it at this meeting that you first received this proposal? [347] A. Yes, right.

Q. Now, after studying that proposal, what took place then? A. Well, we came back again and started going through the contract again, as we normally do.

I made a statement in looking at this thing, that this looked like something that I had seen in the automobile industry years ago, and some of the language was again something I had seen many years ago.

And, then we started to proceed into the actual agreement, itself.

Q. Now, did you go through the Union's agreement at this time, or did you go through the Employer's agreement? A. No, we went through the Employer's agreement, and started working off the Employer's proposal.

Q. Now, looking at that Employer's proposal, I believe you heard the testimony here, concerning the previous

meeting. I believe Mr. Bowden indicated that he was in agreement as to certain items that had been agreed to at that meeting. A. Yes, I did.

Q. So, let me go down through—I will mention the Union Article that had been agreed to, and will you tell me if that was embodied in the Employer's contract? A. All right.

[348] Q. Article I, Recognition. Did the Employer's contract contain that? A. Well, it contained the first two paragraphs, but it did not contain our 1.2, describing the employee.

They had agreed to this on 11/28, but it was not in the Company's proposal.

Trial Examiner: Mr. Mattson, does not a comparison of the documents show this information without the need for testimony?

Mr. Mattson: Well, it is very brief, sir, and I would like to highlight the record at this stage.

Trial Examiner: All right.

Q. (By Mr. Mattson) As to the Union's Article 3.3, under Management Prerogatives, previously agreed to? A. This has been eliminated completely from their proposal.

Q. Under the Union's Article 5.5, that had been agreed to under Hours of Work and Overtime? A. This Article is eliminated, again, from their proposal.

Q. With respect to Article VI, Premium Days, there was testimony that there was agreement on the language on Sub-Paragraph (c), agreement on the language although not on the number of holidays.

Was the language of that sub-paragraph (c) embodied in [349] the Employer's proposal? A. No, there's no language to this effect, at all.

Q. On Article XIII—excuse me—Employer had previously agreed to 8.5 and 8.7 of Article VIII, Vacations.

Was not agreement reflected in the Employer's contract?
A. Article XIII—Discharge, no.

Q. I beg your pardon, Article VIII, Vacations. Article VIII—8.5, only the sections—No. 8.5 and 8.7 of the Union's— A. Of course, all their Articles and our Articles don't coincide, so I'll have to look for them separately.

Q. I understand. A. Now, which were the Articles, again?

Q. Article VIII of the Union's contract—Vacations.

The testimony is that the Company had agreed to 8.5 and 8.7.

A. Which page on the Union proposal?

Trial Examiner: That is Page 6.

Q. (By Mr. Mattson) Page 6, yes. A. No, neither Article is in this proposal of the Company.

Q. On Article XIII, Discharge, I believe you already mentioned— A. It is not in here, either.

Q. The Company proposal does omit—does not have that [350] agreement? A. That's right.

Q. Article XV, on Bulletin Boards, previously agreed to. Was that embodied in the Employer's contract, or changed in any way? If you will look on Page 11 of the Employer's contract? A. Oh, that's the next page.

Trial Examiner: Mr. Mattson, I can make the comparison. It is before me.

The Witness: It's in here, but it's more restrictive than what—than the language proposed by the Union.

But, I did okay this language on 12/19/66.

Mr. Mattson: I had only one more, Your Honor, which would complete my—

Trial Examiner: You may complete it.

I was just commenting that on that one, the comparison is readily available.

Q. (By Mr. Mattson) With respect to Article XVI of the Union's, Leave of Absence, there is testimony that there had been agreement on 16.1 through 16.4—of the Union's, and it was also stated that there was agreement on 16.6, with the words, "and acceptable," included. A. Well, the 16.6 is not in here with the word, "acceptable."

Q. How about number 16.1 through number 16.4? [351] A. The language, I don't believe, is identical in this, although again, this was okayed by myself on the 19th, as far as Leave of Absence is concerned.

Q. You agreed to their language? A. Yes, agreed to their language, although they hadn't incorporated what we had in our agreement originally.

Q. All right.

Now, perhaps we will go—with respect to negotiations as to positions, at the meeting of November 28, do you recall the positions of the parties on the preamble? A. Well, I wasn't at the meeting of the 28th.

Q. I beg your pardon, excuse me. The meeting of the December 19? A. Well, the position of the Union was that we wanted a successor clause included.

Again, we felt that in case this business should be sold, our members should have some protection, too.

Q. Was there any agreement? A. No agreement.

Q. On Recognition, Article—— A. This had been agreed to on 11/28, with 1.2 added, but it was not added at this point, and I okayed it at this point without 1.2.

Q. What about the management rights? A. This we had no agreement on.

[352] Q. Now, as we go through this testimony, Mr. McCall, was your negotiation here now being conducted on the Company's proposal? A. Yes, we worked strictly off the Company's proposal.

Q. What was the position with respect to Article III, on Company Rules? A. Well, we had no objection to the Company having rules, posting rules, but we did not want them to be part of the agreement.

Q. Did the Employer state its position on this? A. They still wanted the Company Rules in, as they had given them to us in their proposal.

They felt quite strongly about the Company Rules.

Q. Article IV—Union Membership is voluntary and Union Visitation? A. Well, I said in both of these that the Union membership being voluntary and the Union activity, that we would agree to that, as long as we had the check-off provision in the agreement.

The Union Visitation—I agreed to this on 12/19/66.

Q. What was the Company's position on your offer to agree to their proposal if they granted checkoff? A. They said they were not going to collect dues for the Union—Mr. Bowden said this.

Q. What about Hours of Work?

[353] Any agreement there? A. Excuse me.

I'm one meeting ahead.

Mr. Bowden said on 12/19 that this would not bar us from getting a contract.

Q. He said this? A. On 12/19, that this would not bar us from getting a contract—check-off.

The Hours of Work and Overtime?

Q. Yes. A. They did not change their position, and of course, our position was that we wanted time and a half for all hours over eight; time and a half for Saturday, as such, and double time for Sunday.

Again, getting into this, he pointed out that they'd rather bypass the economic issues and get back to them later, after we'd talked about the non-economic issues.

I think, if he'd refresh his memory, that he brought this up to me, not Mr. Edwards.

Q. Article VI of the Company's proposal, Seniority? A. Well, they are proposing a plant departmental classification seniority, and we originally proposed plant-wide seniority, and then after hearing much discussion from them about problems, some skilled trades—skilled jobs in there, it appeared as almost an impossibility to work plant-wide [354] seniority in the plant, so we agreed to work out something on departmental.

This, we gave some consideration to. We agreed in this provision under Seniority to a 60 day probationary period, although as I see earlier, I believe, that it had been agreed to on 11/28, but Mr. Edwards, the 60 day probationary period.

They came back and counterproposed 90 days in their counterproposal to us.

Q. I see.

So then, during the discussion, they went back to 60 again, after— A. Yes, after a discussion, we agreed to 60 the second time.

There was much discussion about this Seniority, because they wanted to be in the position of saying whether the man had qualifications, and be the sole criterion on his qualifications and ability, and actually you'd have no seniority at all under this type of setup that they were proposing to us.

Q. Now, I believe you mentioned that this was departmental, that they were proposing departmental classifications— A. That's correct.

Q. —for seniority? A. Yes.

[355] Q. And, will you state the difference between departmental seniority, as such, as opposed to departmental classification seniority? A. Well, when they're talking about departmental classifications, they were taking a man on a certain job; they had classifications on the job that they were on, rather than jobs in the department—all jobs in the department.

You may be a machinist in there, you had seniority only with the machinists, or if a pattern maker, you had seniority only with the pattern makers and not other jobs in the department, where you may be able to do the other type of work.

Q. On the Grievance Procedure, Article VII? A. Well, we discussed this at length, about the Grievance Procedure, and talked about ways of resolving this thing, and of course, the Company first objected to the number of men that we were asking for on the grievance committee.

And, they objected to paying anybody for handling grievances. They wanted it all to be done after work and after hours.

And of course, we said that we thought this ought to be done on the Company's time, that our men ought to be paid, and kind of left this standing, that would get back and discuss this Grievance Procedure further.

They, I believe, during the discussion about [356] grievances, they took a caucus and went outside for quite a while to, I would assume, discuss what we had talked about across the table.

Q. Did they come back with any agreement? A. No, no agreement at all.

I think there was some talk about paying certain people in certain steps, but we had no agreement on it at all, not at this time.

Q. What was the Union's position, as to the Employer's Grievance Procedure, Sub-paragraph—Article VII, Sub-paragraph E? A. Of the Union's proposal?

Q. No, the Company's proposal.

What was your view on that? That is on page 5. A. Oh, this.

No, we didn't agree with this. We said that anything that's in this agreement ought to be subject to a grievance procedure.

Their prerogatives—they're trying to retain their prerogatives and reserve rights of management, and we said anything in this agreement ought to be subject to the grievance procedure.

Q. What was the Union's position on Article VII-F of the Employer's Grievance Procedure? A. We couldn't agree to this, either.

[357] They could actually eliminate a grievance by not observing the time limits.

The grievance must be waived in writing by both the Company and the Union, and if one party didn't waive it, then the grievance was gone. We couldn't agree with this.

Q. The Employer's Article VIII, Arbitration? A. Well, this is one that we had some considerable discussion about, this arbitration thing.

They are proposing non-compulsory arbitration where either party could deny arbitration, and I hadn't seen this in many, many years.

Of course, this disturbed me, and I'm sure it disturbed other people in the plant. I asked Mr. Bowden where he'd come about this, or why he proposed this type of language, and he expounded about a bad experience he'd had with arbitrators, and he named some of them, where they had gone way beyond the contract in settling disputes that they had.

Of course, this—I pointed out to him that he must've had bad cases, if they went this way, and he got this kind of a decision, but we could not buy this kind of agreement, where we have non-compulsory arbitration, because they could block us on any grievance by strictly denying arbitration, and what good is a grievance procedure if you don't have arbitration.

[358] And, Mr. Bowden pointed out, I believe, that some Unions have this in contracts, but I don't know of them.

Q. Article IX, Insurance? A. Well, I think that this point is where I asked actually for a breakdown of the cost of the insurance program, and none of the fellows at the table said that they were qualified to answer problems as to insurance, and they would make arrangements with Mr. Horovitz, their insurance expert, to attend the next meeting, or a later meeting, where he could discuss the insurance with us.

And, this was the way it was left.

Q. Article X, Absenteeism? A. Of course, I also at this meeting asked them for the cost of this insurance plan, a breakdown, give us the actual cost of this insurance program, too.

Article X?

Q. Article X, Absenteeism. A. We agreed to this Article, with the addition of the words, "of illness of more than three days," inserting, "of more than three days—shall be evidenced by a doctor's certificate."

This was in the first paragraph, and they agreed to this on 12/19/66.

Q. Article XI, No Strike.

Did you agree to their No Strike clause? [359] A. No, we did not agree to their No Strike clause.

I think our answer was there that we preferred ours.

Q. As you understood this from discussion, did this No Strike clause limit your right to strike? A. Well, you could strike at any grievance in this thing during grievance procedure, you could strike at any grievance.

In fact, this was their answer, that if you get a problem when we get to arbitration and one of us denies it, then the other one—the other party resorts to his economic strength, to either strike, or they can lock us out.

It limits our right to have our members—it says that we shall not permit our members to strike.

Q. Did you object to that word, "permit"? A. I did not, in this meeting, no.

Q. Was it taken up at a later meeting? A. Yes.

Q. Did their contract limit your right to strike for a number of days? A. We had the right—as I recall it, we had to notify them within ten days before we could strike.

We had to have a letter in by ten days, before we could strike.

Q. I believe that is contained under their Arbitration clause.

Right? [360] A. Yes.

Q. That would be Employer's Article VIII.

Did you agree to the Employer's Article XII, Entire Agreement Clause? A. No, we did not.

We said that we wanted some language added, something to the effect that unless there was—mutually agreed by the parties, to open specific subjects to negotiations.

Q. What about the Employer's Article XIII, Vacations? A. We did not agree to this, either.

We thought that the requirement, the hours that they were talking about, were too long and asked for a reduction of the hours to, I believe the figure was 1500 hours.

And of course, they were asking for 1800 hours, and we had no agreement on it. They made no counter-offer on it.

This is under the eligibility requirements.

Q. I think I already asked you this.

Had they changed the language that had previously been agreed to? A. In the vacations?

Q. Yes.

I believe you testified—— A. Yes, they were sections of it that were changed.

Q. Holidays—did the Union make any concession here? [361] A. Well, the Union had originally proposed nine holidays, and at this meeting we dropped one of the holidays, which was New Year's Eve Day—we dropped that from our proposal.

Q. Was there any agreement reached then? A. No agreement.

Q. Break Periods? A. There was no discussion on the break periods, to my knowledge.

Q. Was there discussion on the Bulletin Boards? A. Yes, there was discussion on it, but the language that they had inserted was a little more restrictive.

I didn't think it was that important, so I just okayed it.

Q. You went ahead and agreed to it? A. Right.

Q. Employer's Article XVII, Miscellaneous? A. Well, at this point there was no real agreement on the miscellaneous provision of it.

There was some discussion about a safety and health committee in the plant, and we asked for equal membership on it, equal representation on it, 50 per cent Union members, 50 per cent Company people, and we had no agreement on it.

Q. As I understand what your answer was, you asked for membership on the safety committee? A. Correct.

[362] Q. What was their position? A. They were satisfied with the committee as it was.

Q. What about that Military Clause? A. We agreed to the Military Clause on 12/19/66.

Q. Article XVIII, Physical Examinations? A. Well again, our position on the physical was that we didn't mind them sending out new employees to take physicals, but we didn't think they should just go out and pick out the older employees and send them for a physical to eliminate them from the work force.

Q. What about Article XIX? A. Well, Article XIX—I was a little surprised when I saw this, that they had proposed nothing at all on wages.

I asked Mr. Bowden why they had proposed nothing, and he said, well, they had made a survey of the wages

in the area and found that their wages were equal to or better than the average wage rate in the area.

And, I asked him, well, who did they survey, and I said we have a plant in the area that I know has rates—we have under contract that has rates beyond this—Buffalo Tank Plant, here in the area.

Well, he said that they surveyed some of the competitors in the area, and he named a few of them, and I couldn't tell you the names of any of them at this moment, but they were paying more or the average of the wages in the area, and they [363] were satisfied that they were paying enough, there would be no wage increases.

I also—during this discussion, I made a comment to him, “Are you saying that your Company can't afford to pay more than this?”

And he made a sarcastic remark back to me, “Now, don't be cute, McCall.”

Q. He never pleaded poverty at that point? A. No.

Q. Article XX, Work by Supervisors? A. Well, we had some discussion about this with the fellows too, but we finally agreed that this was all right, that the supervisors weren't doing too much out there, actually, harming any of our members.

So, we agreed to it.

Q. Article XXI, Leaves of Absence? A. Well, again, A, B, C, D and E were eventually okayed.

Down at E, the Union had asked for leave up to three weeks, and the Company counterproposed 14 days, and—I mean seven days, and it was finally agreed to 14, but I don't think this was any part of my negotiations—we didn't agree to E, not while I was in the negotiations.

Q. But you agreed to A through D? A. Yes.

Q. Article XXII, Reporting Pay? [364] A. We still maintained that we were wanting the four hours that

we made in our proposal, and they counterproposed two in their agreement.

We had no agreement.

Q. Washroom facilities? A. We agreed to this on 12/19/66.

Same with Article XXIV. Same—present facilities are adequate and present equipment was adequate, same as they had in the plant.

Q. But you agreed to this? A. Yes.

Q. These two Articles? A. Yes, that's correct.

Q. Article XXV, Duration?

Any discussion? A. There was no real discussion on this duration, while I was there, at any meeting, actually.

This had been brought up by Mr. Edwards. He had asked for a one year agreement.

Q. What about Addendum "B"—Company Rules?

What were the positions of the parties at this meeting?

A. Our position was that it shouldn't be included in the agreement; their position was that it should be.

Q. Any agreement reached? A. No, no.

* * * * *

[365] Q. (By Mr. Mattson) I believe we have gone through the negotiations generally, Mr. McCall.

Is there anything here at the negotiations that you recall at this time that you wish to point out? A. Well, after the negotiations were over, after we had adjourned or just prior to the adjournment, I asked Mr. Bowden, "When can we get back together again?"

And, he said, "Well, I can't tell you now. I have to go back to the office and look at my calendar."

So, I told him I was here at the Holiday Inn, and give him the room number, "Give me a call when you check your calendar."

Q. Let me stop you for a moment.

You came from out of town for these negotiations. A. Yes.

Q. Where? [366] A. Orlando.

So, I waited around the motel for a number of hours, and I had no return call from Mr. Bowden, so I put a call in, to his home, and I would assume that I talked to his daughter.

She had a nice, sweet, young voice—some sweet, young lady, and I asked if her dad was there. It may have been his wife, but I said, “Is your dad there?”

And, I think she said, “He’s at a meeting of the Quarterback Club.”

And, I said, “Well, you tell him again that I called, and I wish he would return my call about a meeting.”

Well, Mr. Bowden did not return my call that night and had not returned my call in the morning when I checked out of there. Fact, I tried his office again in the morning before I left and talked to his secretary, and she said she would relay the message to him, that he would be in touch.

I left; he hadn’t called, so I went back down to Orlando and I had my secretary call his office again.

And, the message was relayed to him, I would hope, but he still did not call back, as far as getting together on another meeting.

Q. What did you do next?

How many days went by? A. I really don’t know how many days went by before I [367] called again, and I called at his home and got him at his home one evening. And, this was where we got around to arranging the next meeting. I can’t tell you how long a period of time it was. It was sometime after I had gone back to Orlando.

Q. A number of days? A. Yes.

Q. And, you say you got him at home and you arranged for the next meeting? A. Right.

Q. Did he make any comment as to when the meeting would be held?

Who decided the meeting date? A. Well, I think probably Mr. Bowden decided when it would be held.

We were actually getting—there was a holiday period in there, and he didn't want to negotiate over the holidays, so I just brought right up back again—right after the holidays—actually on the 6th is when we agreed to a meeting.

* * * * *

[371] Mr. Mattson: If it please the Court, at this time General Counsel would like to move to amend the Complaint in the following manner:

On page 5, to insert after Paragraph 14, a Paragraph 14 (a), reading:

On or about October 3, 1967, Respondent without notice to or authorization from the Union, unilaterally instituted new general wage rates for various classifications of its employees in the unit described above in Paragraph 5.

That completes that paragraph.

And, to conform the rest of the pleadings to that insertion, I would include on Page 6 of the Complaint, Paragraph 20, insert, following "Paragraph 9," I would add "Paragraph 14 (a)," and to insure clarity of that paragraph, that "all of the above conduct, in addition to that stated in Paragraph 9, constituted bad faith bargaining," I would include there also, "Paragraphs 12, 13, 14, 17 and 18."

Mr. Bowden: Is this Paragraph 20 now that you are talking about?

Mr. Mattson: Yes, to make sure it is clear.

Trial Examiner: So, it would read in Paragraph 20:
[372] "By the acts described above in Paragraph 9 and
in Paragraphs 12, 13, 14, 14 (a), 17 and 18"?

Mr. Mattson: That is correct.

And, in Paragraph 21 of the Complaint, following the
number—"Paragraph No. 14," insert "14 (a)."

And, in Paragraph 23 of the Complaint, insert,
"14 (a)" after "Paragraph 14."

That completes my motion.

Mr. Bowden: Your Honor, I am going to object to the
amendment at this time.

This Complaint was filed back the middle of last summer. It has been amended since then. The General Counsel has completed his investigation of this case many months ago, and I think that these complaints are improper to be made half way during the trial, when this information was available to them at any time since they started the investigation, and certainly long before the issuance of the second amended Complaint.

Trial Examiner: Well, my view of—assuming that the evidence introduced by the General Counsel—I have not evaluated it as yet, and I am not sure—but if it spells out a violation, I would consider it so intimately related to other matters that are alleged as violations, that I would consider this amendment perhaps superfluous in that respect, and in the interest—to make the thing formally correct, I think it is a proper amendment.

[373] I overrule your objection to it and the Complaint will be amended as moved by the General Counsel.

* * * * *

Further Direct Examination

Q. (By Mr. Mattson) Mr. McCall, yesterday we were discussing negotiations—the negotiations of December 19, 1966.

Now, I ask you perhaps at this time to look at Respondent's Exhibit No. 3, which is purported to be a resume from notes taken by Respondent's representatives? A. Yes, I have that.

Q. Now, as you look at these, I realize—I am not asking you commit yourself to the accuracy of the entire content in [374] this brief time.

In other words, the fact that you say one item may not be correct does not constitute the understanding that all the rest of the document is correct. A. That's right.

Q. With that reservation then, let me ask you to glance at that, starting with the first page, and see if you spot any statements on which you would like to comment.

Perhaps we will start with Paragraph III. A. (Examining document.)

Paragraph III is more or less correct.

Q. I think you have already given that testimony? A. The first statement I would like to talk about on this thing is Paragraph V, where they say I stated I had negotiated similar agreements in the automobile industry.

This is not so. I said I had seen similar statements—similar agreements in the automobile industry in 1938 because I lived in that area at the time. I did not negotiate for the automobile unions.

Q. Now, if we go down—— A. The rest of that page—the first page is pretty much in line with the notes that I have, too.

Q. Let me comment on the first page, Paragraph V, Subparagraph B, where it says that McCall wanted a successor clause in case that—in case the Company should go out of business.

[375] Was that “go out of business”? A. No.

We wanted to protect our employees, in case they should sell the business, not go out of business.

Q. Now, let me call your attention—

Well, first of all, F and G—if you will glance at that, the second page, particularly in the third paragraph of G. A. Well, this not so.

I didn't say that we would study this article with the idea of giving a little and advising them, the Company, —with the idea of giving a lot.

I said we would study the article. There was no comment made about anybody giving a little or giving a lot.

Q. I noted in Paragraph I, concerning arbitration—were there any other statements made to this, and do you have any clarification of this paragraph? A. Yes.

Well, I think on the record yesterday I pointed out about Mr. Bowden expounding about a bad experience with arbitrators.

But, in addition to that, I suggested that we select jointly a permanent arbitrator to help resolve the disputes, and I said for the first choice, "We'll take Mr. Tom Pearsall, the vice-president of the Company, as the first permanent arbitrator," and this, of course, subject to removal by either party if they are unsatisfactory.

[376] Q. What was the response? A. No response.

They still wanted their non-compulsory arbitration clause.

Q. Now, was to this statement, "They reiterated that they cannot agree to non-compulsory arbitration," was that—cannot agree as of this meeting, or was there any clarification of this? A. Well, at this point our position was that we still wanted the arbitration clause that we had proposed, compulsory arbitration.

Q. Under Insurance, I notice the paragraph ends with —with Mr. Horovitz would be invited to attend— This was agreed to by the Union.

What was the Union's thought on this? Was anything said at this time? A. Well, it was not at our invitation.

The Company said that they have an expert in this field, and they wished to have him there and would have him available as quick as they could get him free. We did not invite him. The Company brought him in.

I'm sure we can't invite Company insurance representatives to our meetings. We haven't been able to do so, as yet.

Q. Now, he did not attend the meeting following this, did he? [377] A. No, he did not.

Q. I notice on Page 3 of this summary——

Am I ahead of you or behind you? A. No, I'm on Page 3 right now.

Q. I notice that the next to last paragraph indicates job classifications and wage rates to be discussed later; yet, I note on the very last page that it indicates there was some discussion of some form, where the employer took the position that the wage rates were competitive for classifications in this area as evidenced by a survey they had made.

So, there may be some inconsistency there.

Do you recall—or, perhaps you have already testified? A. I had testified to this yesterday.

Q. I see. A. As to the survey that had been made.

Q. I do not see check-off listed here, but I see a note I have, that I believe you remarked yesterday that—— A. Yesterday Mr. Bowden's comment in the meeting of the 19th—this would not be a bar to us getting a contract.

* * * * *

[378] Q. Let us proceed, Mr. McCall, to the next meeting, January 6, 1967.

You attended that meeting, did you not? A. Yes, I did.

Q. Do you feel that it would be easier for your recollection at this point to go over the employer's contract, item by item, at the outset, or to go over the notes taken by

the employer? A. I think probably it would be just as well to go over the notes taken by the employer.

Q. At this point? [379] A. Yes.

I also have notes that I took. I think I'm pretty well familiar with what happened.

Q. All right.

The meeting was held at 10 o'clock, and Mr. Edwards was present, as well as the employee committee with you?

A. That is correct.

* * * * *

Q. (By Mr. Mattson) If you will note the Arbitration—let's go to the issues—Arbitration.

Here again, of course, it is a comment. It starts off, "They insulted our proposal," and I do not know whether—

Trial Examiner: This is a matter of interpretation by the Company.

[380] We are interested in what was said.

The Witness: Well, we didn't insult the proposal; we just didn't agree with it.

(Pause.)

We had discussed this Arbitration originally in the meeting before, and we voiced our opinion on it at that time. And again, our position was still the same, we still wanted compulsory arbitration in the plant.

Q. (By Mr. Mattson) And, the Company's position—do you recall? A. They still were insisting upon non-compulsory arbitration, even though I had earlier suggested that we make Mr. Peacock a permanent arbitrator, in our first meeting.

Trial Examiner: That was Mr. Pearsall, you mean?

The Witness: Mr. Peacock, Mr. Tom Peacock.

If I said Pearsall before, I will correct myself. It was Mr. Tom Peacock.

Trial Examiner: All right.

Q. (By Mr. Mattson) Let's move on, to check-off.

Was any comment made by— A. Yes, this—Mr. Bowden at the January 6th meeting commented that they weren't going to collect dues for the Union.

Q. Did he give any further explanation as to why? A. No, no, no further explanation.

Q. Seniority is next.

[381] Was there any— A. Yes, we discussed seniority at quite some length, and talked about several phases of it and proposed something to them on the line of committee men in areas being paid, and the committee as such being paid for time lost investigating grievances.

And then, they took a recess at this point, because they wanted to study the seniority provision, I would assume.

And, they came back after a long recess, and we again agreed to some language that was close, and I agreed that I would draft new language, embodying what they had said along with ours, and submit that to them on the next meeting.

Q. That was on the seniority proposal? A. Seniority, yes.

Let me check. They say they agreed to 11.6 of our seniority article. Let me check this.

(Examining document.)

Yes, 11.6 was agreed to on 1/6/67.

(Pause.)

The words, "reasonable," were changed to "acceptable," at that point, too in 11.8.

Of course, the rest of the document, as regards to seniority, is pretty much correct, that we did indicate that we'd work out some language and submit that to them at the next meeting, which we did.

[382] There was much discussion about this seniority, because of their position of departmental job classifications,

and we said that we would agree to departmental seniority, but then we talked about people that may have had more seniority than people in the labor pool, jobs they could perform without any training, without any background, and this was discussed at length.

In fact, I think Mr. Edwards drew a diagram about how this labor pool would work, and it was pointed out to them, and they again wanted to discuss it further.

And, we told them we would submit another proposal on seniority.

Q. Which was encompassing—which would encompass the departmental—— A. The departmental seniority, correct.

(Pause.)

Under the insurance provision, again, this we were talking about Mr. Horovitz again, and the Company agreed to have him at an earlier meeting, but for some reason he couldn't be there, so they agree that they would have him at the next meeting, to discuss the insurance pension plan.

Q. Now, in speaking of Mr. Horovitz, what was the Company's position as to the schedule for the next negotiation session, when it was to be held? A. Well, they said they would try to arrange the next meeting [383] whenever Mr. Horovitz would be available.

Of course, Mr. Edwards at this point objected, that we didn't need Mr. Horovitz there, we could go ahead and meet without him, since it was only the insurance issue.

But, they again wanted Mr. Horovitz to be there to explain this insurance program.

Q. Down under Article XI, No Strike Clause, I note right about the middle of the paragraph it says that the Union agreed that the objective was reasonable, but still opposed the Company's right to appeal directly to the courts.

Can you give us any amplification of that? A. No, I don't think that the Union agreed to any objective being reasonable in this.

Actually our position was that we preferred our no strike clause that we had submitted to them earlier.

Q. What was your position as to their right to appeal to the courts directly? A. Our position?

Q. Yes. A. Well, they have the right to appeal to the courts if we violate our no strike agreement, anyway.

Q. I notice on the last page, Work By Supervisors—have you commented on that already? A. Yes, we had agreed to this on the meeting of 12/1966—this article had already been agreed to.

[384] I think there was some discussion as to whether some of them were on the eligibility list at the time of the election or not—I think this was what the discussion was about, but we had already agreed as to supervisors working.

Q. Now, I see, “prior to adjourning, McCall suggested that we look at the following articles in their proposal”—apparently the Union's proposal—“articles No. 9, 13, 18 and 23.”

Now, have you mentioned Article XIII before? A. Well, Article XIII of the Union's proposal had been agreed to by the Company on 11/28, with Mr. Edwards.

This was as—this was the Discharge section.

Q. What was the Employer's position at this meeting on wages? A. Well, at this meeting, they had still not changed their position as far as granting any wage increases.

Q. Now, in discussion at this meeting, discussion of the no strike provision of the Employer, was there any discussion about that word, “permit”—“the Union will not permit—”? A. Not in the sessions that I was in, no, not the word, “permit,” alone.

(Pause.)

Yes—excuse me—there was. There was a comment made by Mr. Edwards in regards to this, about the word, “permit.”

Q. What was that? A. I think the comment was that we didn't have one [385] hundred per cent of our members at all times, and the provisions in this agreement says that we have a no strike no lockout agreement, and the only way they can strike is during the grievance procedure, they can strike over a grievance, if both Companies deny an arbitration, they are allowed to strike in this section, and now they're coming back in another section and saying that the Union won't allow them to strike.

Q. What was the Company's position—they still wanted the “permit” in there? A. Yes.

Q. And, they would not change the other provision? A. No change.

Q. What about the Union's position—or, have you covered this—on the grievance committee?

Did you make any— A. This was covered yesterday in my testimony.

Q. I believe you indicated that the Union agreed—what, to a lesser number? A. To a lesser number, yes.

We reduced it—I think our original proposal was fourteen, and we reduced it at that point to seven.

Q. I did not know—well, to your memory now, yesterday were you speaking about the previous meeting or at this meeting? A. About the reduction of it?

Q. Yes. [386] A. Well, I really—on the grievance committee, I wouldn't say definitely whether this was on the previous meeting, where we agreed to reduce it to seven, or whether it was on the meeting of the 6th.

It was one of the two meetings.

Q. All right. A. I think it was probaby on this meeting of the 6th, because we go into seniority in much more detail on this meeting.

Q. You indicated that after discussion of seniority, that you had planned to redraft the language.

Was this based on your belief that there was some tentative agreement here, on the departmental seniority? A. Yes.

Q. What was your impression—that they wanted departmental seniority, and they would go for that and perhaps omit the departmental job seniority? A. That's correct—job classification seniority.

Q. You did turn in that draft?

I think it is in evidence already. A. It was turned in on the 25th, the next meeting that I attended.

Q. General Counsel's Exhibit number 10—did the Company accept it at the next meeting? A. No, they did not.

[387] Mr. Bowden: What meeting are you talking about now?

Mr. Mattson: The meeting following this.

That would be the meeting of January 25.

Q. (By Mr. Mattson) Is that correct? A. The 25th, yes.

It was a lengthy proposal, and in the meeting of the 25th, they took this proposal and again asked for an adjournment and went outside and studied it for some time. They come back and asked some questions on it, and then again, they weren't completely satisfied, and they wanted to study it further.

Mr. Bowden: Is he talking about grievance or seniority?

Mr. Mattson: We are talking about the seniority.

The Witness: Right, seniority.

Mr. Bowden: Seniority?

The Witness: Right.

Mr. Bowden: You said grievances, is what I——

Mr. Mattson: I beg your pardon.

Q. (By Mr. Mattson) After this recess for studying this, did they make it clear at that point that they were going to stick with departmental job classification seniority? A. Referring to the meeting of January 6th or——

Q. No, we moved up just on this one subject. A. No, they left the meeting. They was going to give this some further study.

Q. No final agreement there? [388] A. Right.

Q. The same with the January 6th meeting—the next was what—the Company requested or advised that the meeting would be held when Horovitz—— A. They would make arrangements to get hold of Mr. Horovitz and would call us when they had him, as to the next meeting, and this was at the point where Mr. Edwards injected that he didn't think it was necessary to have Mr. Horovitz at the meeting, we'd go ahead and have a meeting without him to discuss—to negotiate some of the other items.

It was our understanding that Mr. Horovitz was supposed to be at the January 6th meeting.

Q. Now, unless you have any further comments on this meeting, Mr. McCall we will turn to January—the January 25 meeting. A. No, I have no further comments.

Q. And, I believe that will be—the Respondent's notes are Respondent's Exhibit No. 5? A. Yes, I have that here.

Q. On the first page, I notice that Horovitz was present, but on Paragraph III, at the very last of that paragraph, it says, "McCall stopped this discussion," and would you explain this? A. Well, I don't think I stopped any discussion.

I think he had covered about everything that we had [389] asked for in Blue Cross and Blue Shield, and I guess probably I may have said something, "Well, let's go on to the pensions,"

I didn't stop him—stop any discussion. I think all the questions that we had were probably satisfactorily answered.

Q. On the second page, I notice under, "Miscellaneous," Subparagraph (1), it indicates there that "McCall replied that he did not know and that his group had not tried to figure it out."

I am not quite sure what all of this is. A. Well, let's go back to Miscellaneous—just above that they brought up that the Union brought out—brought up John Overman, that we wanted to negotiate him back to work.

I was called by telephone some time previous to this meeting by John Overman, that he had been terminated out at the plant, and I'd got his story, as much as I could get out of his story, and I called Mr. Bowden, again reaching him at his home in the evening, and told him I wanted to talk to him about John Overman, that I understood that he'd been fired out there, and I wondered if we couldn't work out something about getting him back to work.

Mr. Bowden says, "Well, I don't know the details on this case. I'll have to confer with my people, and I'll be back in touch with you about John's case after I find out what they have said."

[390] Well, up until the time we went into the meeting, I had still not received a call from Mr. Bowden, and after four or five days, I went to the Board and filed a charge on his discharge. And of course, when we went to the bargaining table, we did ask that John be put back to work, and Mr. Bowden pointed out that, "inasmuch as you've gone to the Board and filed a charge, let the Board handle the case."

And I said, "Well, I only did this after you'd refused to return my call."

Q. That is the explanation of the "Overman," or the comment concerning NLRB in here? A. Yes.

(Pause.)

And, in Item (1), they asked if I knew how much the overall package of this would cost, or if I had figured it out.

I had not, because I did not have all of the figures, as to the amount of people involved, this insurance plan they have out there at the plant, and I don't know how many employees they have at their plant. I'm sure myself as a Union representative that I wouldn't know if their plant manager didn't know how many they have. It would be pretty hard for me to project an overall cost to a company when we don't have the complete employment complement the year 'round, whether it's seasonal, what it is—it would be hard for me to project.

I had an experience just recently with a company, where [391] we negotiated—

Trial Examiner: Now, Mr. McCall, I do not think we need that extensive an explanation.

The Witness: All right.

(Pause.)

Then again, going down to—I guess it would be Article (2), (a), (b), and (c), and possibly (3) of his statement—

Q. (By Mr. Mattson) I beg your pardon.

Where is that? A. Under the "Miscellaneous," they are talking about the average rates of Florida Machine and Foundry people and the average rates of the Fleco people.

Actually, more of the Article (3) than anything—again, this thing about wages was brought up, and they pointed out that they had made—well, this comes back later in the agreement, but I'll go into it.

They'd pointed out that they'd made another survey since the last one and found certain job classifications were not in line, so they were offering to give wage in-

creases. I think the jobs that they spelled out are the electric furnace operator, the journeyman pattern maker——

Trial Examiner: Where is this you are reading from?

The Witness: This is on page 4.

Mr. Mattson: I think, Your Honor, he is combining page 2, the comment at the bottom, with page 4.

[392] A. Right.

Mr. Mattson: The middle of page 4, where the increases are reflected.

Trial Examiner: Mr. McCall, I am going to ask you that in looking at this document you try to limit yourself to inaccuracies which you consider pertinent to the charges in this case.

And, if in doubt, I would prefer that you let them go, unless Mr. Mattson asks you a question. I think Mr. Mattson is prepared to ask you on all matters which he considers material.

The Witness: All right.

Q. (By Mr. Mattson) Now, I think you have completed that on the wage rates? A. Yes.

Q. That there had been a new study or survey, and they now felt that they would offer these rates, based on that survey? A. That's correct.

Q. Did the Union make any comment, do you recall, at this time about the survey—either you or Mr. Edwards?

Or, do you recall? A. I don't recall any comment on it at this point, except Mr. Edwards saying, "Well, this is only to the skilled jobs and not the other people in the plant."

Q. Was there some indication about how many people would [393] be involved in this wage increase, in numbers, for example? A. There was, and I think it was—

I believe the figure was somewhere in the vicinity of 30, but I'm not sure this is a positive figure.

Q. About 30 in a plant of over 300? A. Yes.

Q. On page 3 at the bottom, where it says, "Arbitration"—excuse me—just above the word, "Arbitration," it says that the Company indicated it would consider McCall's request.

Is that correct, or did they give any other reply? A. I had no indication they were going to consider it.

Q. What was your understanding then? A. Their position was still the same on the overtime provisions—time and a half after 40.

Q. Now, I think I will ask you to comment on page 4 at the top.

It is a rather lengthy paragraph—and I—I appreciate the fact that this paragraph does not refer to a contract provision exactly, but do you recall Mr. Edwards making that broad statement there? A. Not in this form.

Mr. Edwards did talk about he felt we ought to be back at the bargaining table more often, that our sessions were too far apart.

[394] Q. Did he speak as to the length of the sessions? A. Yes, he did remark that we ought to stay at the bargaining table and see if we can't wrap up an agreement here.

The sessions were short and there were numerous recesses.

(Pause.)

I think—I recall that he did say something to the extent that it wasn't our business to try to run your Company, but we wanted to see that the fellows got a share of those profits that they were making out there.

* * * * *

[395] Q. (By Mr. Mattson) I notice on that same page 4, the next to last paragraph, in the discussion on hospitalization, and I believe there is a remark there that

he indicated that the Company would like to increase the daily room rate.

Is that correct—from nine to fifteen dollars a day?

A. At this point, they did propose an increase from nine to fifteen dollars a day in the hospitalization, yes.

Q. Did they make any proposal with respect to raising insurance rates, at all? A. Not on the life insurance.

Q. At that time, were you aware of General Counsel's Exhibit No. 6, which was a notice to all employees, dated August 3, 1966, which indicated that the Employer had planned a projected increase in benefits, in the room rates and the insurance amounts? A. I haven't seen Exhibit No. 6, but I hadn't heard anything about increasing insurance until this day.

(Examining document.)

No, I wasn't aware of this at all.

Q. So, at no time did the Employer or its representatives, in the discussion of this, say that they had this plan under way, prior to— A. No, sir, no.

[396] Q. Did they at any time during this meeting come up in their insurance offer to five thousand for employees? A. No.

Q. On the last page, the second paragraph, it indicates that you urged the Company to come up with something, I notice, "‘or else’ in threatening tone."

Did you threaten them? A. I'm sure I didn't use, "or else," or in a threatening tone.

I probably urged them to come up with something other than what they'd put on the table, because apparently there was nothing on the table at this point.

Q. Now, if I can perhaps get away from this summary that has been prepared, I am sure from my notes that you have a complete review here.

Did we cover what was done on Grievance?

I believe you indicated that you had submitted the seniority proposal, which is General Counsel's Exhibit

No. 10 and the Employer said that they would study that?

A. Yes.

Q. Did you also have at this time a grievance proposal, which is General Counsel's Exhibit No. 11? A. Yes, I submitted a new grievance proposal.

Q. And, that is General Counsel's Exhibit No. 11, I believe.

[397] What was the Employer's reaction to this? A. Well, they were going to study this grievance proposal, too.

As I recall, they had no real objection to any part of it, because we had more or less worked out the language at an earlier meeting.

Q. Now, this grievance language that you have here is strictly that portion of the grievance procedure falling just short of any arbitration, where the parties were at issue? A. Up to arbitration, that's correct.

Q. All right.

Up to arbitration. A. Right.

It's my recollection that we agreed to that grievance procedure on that date.

Q. I beg your pardon? A. It's my recollection that we did agree to that grievance procedure on that date, of the 25th.

Q. Thank you.

That is with the issue of arbitration open? A. Yes.

Q. Now, do you recall whether yourself or Mr. Edwards asked how the parties could settle grievances under the proposed Company's arbitration—voluntary— [398] A. Yes.

There was a question asked to the Company. I don't recall whether it was myself or Mr. Edwards—possibly it was me asking how we could resolve grievances.

Of course, they said under their proposal if we couldn't agree to compulsory arbitration, we couldn't agree to an

arbitrator, either party could use their economic strength to either strike, or they could lock us out.

Q. All right.

Did the Company or any Employer representative, or Mr. Bowden, say what their position was as to arbitration, at that point, that there was any opening on this in the future? A. They were still insisting on non-compulsory arbitration.

Q. Did you make any request as to the cost concerning the insurance program? A. Yes.

And again, as I testified yesterday, I thought I made it in the meeting of the 19th, but it was either in the meeting of the 19th, or on this date of the 6th, and I'm not sure at which date I made a request for the cost of the insurance program.

(Pause.)

[399] I would feel that I may have made it on the 19th because of their saying that they were going to have to get Mr. Horovitz in there at the next meeting.

Q. All right, sir.

I have no further questions on this meeting, unless you have something in mind, Mr. McCall, on this proposal. A. Well, the only thing—I note in going back over these contracts is that we did propose a four weeks vacation period after 15 years, which is a reduction in our original vacation proposal—on January 6 of 1967.

Trial Examiner: Now, you are through with your direct examination?

Mr. Mattson: I think so.

Let me see if I have—one more meeting.

Trial Examiner: Is this the last meeting you attended, Mr. McCall?

The Witness: Yes, that's the last meeting.

* * * * *

Cross-Examination

Q. (By Mr. Bowden) Mr. McCall, in your testimony in reference to Meeting No. 3, I think was your first meeting, on December—— A. Yes.

[400] Q. ——December 19, and that is Respondent's Exhibit No. 3? A. Yes.

Q. Will you get General Counsel's Exhibits Nos. 8 and 9, and pick out or indicate to me, if there be any, any conflicts with our agreement of Article 3.3 of General Counsel's Exhibit No. 8 and Article II of our proposal, which is General Counsel's Exhibit No. 9? A. (Examining documents.)

No. 3.3 of General Counsel's No. 8 and Article II——

Q. Article II of General Counsel's Exhibit No. 9. A. Well, in your's, there's no probationary period of any kind spelled out, whereas ours has a probationary period.

Q. I am talking about—we had an agreement, as I understand it, on General Counsel's Exhibit No. 8, of Article 3.3.

Is that correct—on November 28?

You indicated yesterday that we had proposed a new Article for that, and now I am asking you what conflict, if any, is there in our proposal with the agreed Article 3.3? A. Well, you have——

Trial Examiner: What is the comparable Company Article that you have referred him to, Mr. Bowden?

Mr. Bowden: Article II.

Trial Examiner: Article II, Management Rights?

Mr. Bowden: Yes.

[401] That is Article III in their proposal—Management Rights, or attempts to cover that subject—they call it Management Prerogatives.

The Witness: I think the document speaks for itself.

Q. (By Mr. Bowden) My point is this, Mr. McCall.

You indicated yesterday that even though we had agreed on November 28, 1966, to 3.3, that we proposed a new Management Rights Article when we made a proposal, and I am asking you—the inference being that we had withdrawn this agreement, and now I am asking you—
A. No—

Mr. Mattson: I will—Mr. McCall has already stated a valid objection which perhaps I should make at this time.

The document does speak for itself. I am a little bit late, but I am trying to figure out which one Mr. Bowden is talking about.

Mr. Bowden: I said 3.3—there was agreement on 11/28.

Mr. Mattson: All right.

Mr. Bowden: We proposed then in General Counsel's Exhibit No. 9 a Management Rights clause, and Mr. McCall's testimony was that notwithstanding the fact that we had reached this agreement, we made a new proposal on Management rights, and I am asking him what conflicts, if any, were [402] there in those two clauses, to give rise to his comment.

The Witness: I don't think that was—

Trial Examiner: I am not interested in Mr. McCall's comment in that respect, when it comes to a comparison of the proposals, unless—I think this is something for the parties to point out to me, the differences if any, and for me to evaluate their comments. I don't think it is for Mr. McCall—the fact that he may have called them different, and they may or may not be different.

Mr. Bowden: All right, sir.

Q. (By Mr. Bowden) Then, in General Counsel's Exhibit No. 8, this is No. 5.5, and in General Counsel's Exhibit No. 9, Article XXI E—

Well, let me look for that—I will withdraw that question, as I have a note here that I want to refer to, and I will look for that before we go into it.

I believe you said on General Counsel's Exhibit No. 8, your note reflected there was no agreement on 16.6 at the December—— A. From General Counsel's Exhibit No. 8?

Q. Yes.

Trial Examiner: The Union's proposal.

The Witness: 16.6?

Q. (By Mr. Bowden) Yes. A. (Examining document.) [403] What was the question, again.

Q. I said, did you testify that your notes indicated that that had been agreed upon? A. On 11/28.

Q. On 11/28? A. Yes.

Q. Now, with the addition of any language? A. Well, 16.5 had not been agreed to and 16.6 had not been agreed to, except for the words in 16.6, "and acceptable," had been added and then agreed to.

Q. Well, didn't you say that 16.6 had been agreed to in your direct testimony?

Mr. Mattson: I believe this is his comment—from Mr. Edwards' testimony, that it had been agreed to on the first day of the meetings, 11/28.

The Witness: The document so indicates, too.

Mr. Bowden: I am just asking him what he testified to, and my notes indicate that Mr. McCall said that that had been agreed to on 11/28, according to the notes, and I don't have such an agreement and I am asking him about it—did he say that.

The Witness: I said it, and our document so indicates the words, "and acceptable," are inserted 11/28, and okayed by Mr. Edwards.

Q. (By Mr. Bowden) All right, sir.

[404] Now, at the end of that meeting, I think you——

Trial Examiner: Which meeting are you talking about now?

Mr. Bowden: We are talking about the only meeting I have talked about so far, and that is Meeting No. 3, on December 19, the first meeting he attended.

Trial Examiner: All right.

Q. (By Mr. Bowden) I believe you testified that you called my home, I assume on December 19, 1966, and you were told that I was at a Quarterback Club meeting? A. I said first in my testimony that before adjourning the meeting, that you had said you had to go down to your office to look at your calendar——

Q. I understand that.

But, you said you called my home that night—— A. That evening, yes.

Q. ——and were told I was at a Quarterback Club meeting? A. I said Quarterback Club or some club—I thought it was the Quarterback Club.

Q. Well, I believe you said it was the Quarterback Club, if I recall. A. Well, this is what I thought it was and I was talking to somebody from your household, and they said—I thought it was the Quarterback Club because this was in my mind at the time—football, and I think this was why the statement [405] I made was Quarterback Club——

Q. If I told you that the Quarterback Club does not extend beyond November, would this change your recollection as to what was said at the time? A. No, this would not.

This would not. I wouldn't know where you were, if someone at your home said you were at the Quarterback Club, this is what I would have to say.

Trial Examiner: I do not think it is important whether you were or were not at the Quarterback Club.

The important question is—if it is important—is whether a telephone call was made to your home to ask about a meeting.

Mr. Bowden: That is why I asked about it. I question whether the call was ever made.

Trial Examiner: Well, I think Mr. McCall has given an answer on it, as far as the Quarterback Club is concerned.

Mr. Bowden: All right, sir.

Q. (By Mr. Bowden) To whom do you say you thought you talked at my home? A. It was a lady.

I said I thought it was—might of been your daughter—somebody with a lovely voice—I said—it might've been your maid.

I don't know.

[406] Q. If I told you my daughter is in college and not home, would that change your recollection of that telephone call? A. I think—

Mr. Mattson. Objection.

Trial Examiner: The objection is sustained.

He did not say it was your daughter. He said he thought it might be.

Q. (By Mr. Bowden) Now, this meeting on December 19, 1966, Mr. McCall.

This meeting was adjourned, according to my notes, at three p. m. At whose suggestion was that meeting adjourned, if you remember? A. I really couldn't recall at this point who made the suggestion for an adjournment.

Q. Could it have been the Union committee? A. Well, there's a possibility.

I would assume that we'd talked over the issues at that point, and we had nothing more to talk about right at that immediate period.

I don't know who called for the adjournment.

Mr. Mattson: I beg your pardon.

This is December 19?

Mr. Bowden: Yes.

Q. (By Mr. Bowden) All right, sir.

Now, turning to the January 6 meeting, when Mr. Edwards [407] was with you, at this meeting is it generally true that you were spokesman for the Union committee at this meeting, and Mr. Edwards more or less assisted you at the table? A. On January 6?

Q. Yes. A. Yes.

Q. Do you recall Mr. Lang making a statement at this meeting, a member of your Union committee, that the Arbitration clause that you had was the way it was going to be in the contract? A. I don't recall the definite language, Mr. Bowden, but I know that he made some remark about arbitration.

I don't recall the definite language that he made.

Q. Would you deny that he said this? A. I couldn't even admit or deny it, because I don't know whether this was what he said or not.

Trial Examiner: Did the Union take a firm position on arbitration at this meeting?

The Witness: This is the meeting where I again was talking about—I had earlier talked about the permanent arbitrator, and tried to resolve this through permanent arbitration—and I think that this position at this point, we did agree or did take a position that we still wanted compulsory arbitration.

[408] Q. (By Mr. Bowden) Now, at this meeting on January 6, we spent a considerable part of that meeting, as you noted, working on our grievance procedure, did we not? A. Yes, we spent quite a bit of time on it.

Q. In that grievance procedure, working from the Union's proposal, did not we agree to the language in the Union's proposal, in Article XII—this is General Counsel's Exhibit No. 8—with a change in a few words, reduction of a few numbers on the committee? A. Well, there was a change, I think, in the amount of time in processing grievances, and then there was a change—discussion of change about the number of grievance committeemen involved.

Q. At that time, did not we agree that we would pay grievance committeemen, which does not appear in this proposal, but this agreement that we made during the proposal, to pay the grievance committeemen for the actual time which they lost on their regular shifts, and the grievant—the committeemen, steward and chairman— A. Time lost on the regular shift, yes, this was agreed to.

Q. And also for the committee in Step 3? A. Right.

Q. Did this represent a change in the Company's position, to something the Union desired? [409] A. Yes, at this point this was a change.

They agreed to different time limitations, they agreed to pay some of the grievance committeemen that they had not agreed to pay before.

And, as I said earlier, I agreed to draft new language for the grievance procedure, and I did this and we agreed to it on January 25. I drafted new language after our discussion.

Q. All right.

Then, we also had at that meeting, did we not, a long discussion on vacations and reduction of hours of vacations?

This was on the January 6 meeting? A. Yes, there was discussion of that—of vacations, and we proposed a reduction in hours, and we also proposed the four weeks after 15 years, as I said earlier.

Q. I will ask you, Mr. McCall, if this was not the meeting in which you advised that you were staying at the Holiday Inn on Phillips Highway, and asked me to call you at the end of this meeting? A. I would assume that I may have told you that after this meeting, too.

Q. Well, do you recall whether you did or not? A. I couldn't give you a definite yes or no, on that, no.

[410] Q. Could you have been mistaken about the last meeting, and instead, then, referred to this meeting? A. No, no.

I called you on the first meeting, I'm sure. My secretary also called your office the next day, after I got back to Orlando.

Q. I believe you said that on that meeting, if it was the first meeting, that your secretary called me several days when you had not heard from me—in several days, she called? A. No, I did not.

I said my secretary called you the next morning.

Q. And, talked to me? A. Yes—not to you, to your secretary.

Q. I believe you testified that you talked to me then in two or three days? A. Later on I called you, several days later, and talked to you at your home.

Q. Yes.

This would have been then about Christmas Eve, or thereabouts, would it not?

A. I really couldn't tell you the time.

It was sometime after this meeting of December 19, when I did not hear from you and you didn't return my call. I couldn't give you the exact date.

[411] Q. Now, on this meeting of January 6, 1967, we also had quite a discussion on seniority, did we not? A. Yes.

Q. And, working from the Union's proposal again? A. I would—

Go ahead. Excuse me.

Q. Did we not reach agreement on 11.6, 11.7, 11.8 with the addition of the word, "acceptable," instead of "reasonable"? A. 11.6 was okayed by myself on January 6, 1967—of our proposal.

Q. How about 11.7? A. No, I have no notation of this being okayed.

There was a possibility.

Q. 11.8, with the word, "acceptable," in place of "reasonable"? A. 11.8 with the "acceptable" added was agreed to.

Q. All right.

And, on 11.9, did we not make a proposal in reference to job bidding, that it would be by departments, that we would entertain one tryout for each vacancy, and that the bidding was not to be used for lateral or down bidding, and that an employee could only have one successful bid per year, and that the bid would be confined to the next higher classification? [412] A. I believe this is correct.

Q. This was all in connection with our negotiations on that day on job bidding.

Right? A. Yes, sir.

Of course, something of this was, of course, out from your proposal—this seniority thing—some of this language we agreed to was from your proposal, too. I believe 11.6 was part of your proposal. It's a different Article in ours.

Q. This was our proposal in reference to your Article 11.9, General Counsel's Exhibit No. 8, in which you had

attempted to cover bidding in that proposal? A. This was discussed—this was discussed, and there was no agreement made, but it was discussed.

Q. Now, on January 6, did the Union withdraw their proposal, on 8.4 on page 6 of General Counsel's Exhibit No. 8. A. 8.4?

Q. Yes. A. This I couldn't give you a definite answer on, yes or no.

Q. You do not recall it? A. I don't recall it.

Q. On this Article XX, which is General Counsel's Exhibit No. 9, my notes indicate, and I believe you testified that [413] we had agreed to this proposal on December 19, 1966.

Isn't that correct? A. That's correct.

Q. I will ask you, on January 6, 1967, if you then did not advise the Company officials that you were withdrawing your agreement on that, you could not then that day agree to it? A. No, I did not.

Mr. Mattson: Which Article is this?

Mr. Bowden: Article XX on page 12 of General Counsel's Exhibit No. 9.

Mr. Mattson: All right.

Q. (By Mr. Bowden) You did not withdraw that proposal on January 6? A. No, I did not.

Q. Did Mr. Edwards withdraw it, since he was with you that day? A. I'm sure that it was not withdrawn on that day.

Q. Are you positive? A. Yes, I'm positive.

Q. All right.

Passing to your next meeting, Mr. McCall, which was January 25, at this meeting Mr. Horovitz was present.

Is that correct? A. That's correct.

[414] Q. Now, Mr. Horovitz at that meeting explained to you the Company cost of its insurance plan, as well as the dependent cost of this plan, did he not? A. As far as going back to what the Company cost—you mean for the overall cost to the Company, dollar for dollar—I mean——

Q. Did Mr. Horovitz advise you at that time that the monthly cost to the Company was \$2.56 per employee, and that if the employee had dependent coverage, he paid \$5.75 and—— A. Yes.

Q. ——for that? A. Right.

Q. Yes.

So, you got the cost figures on the insurance from him? A. This was on the 25th?

Q. Yes. A. Yes.

Q. And, he went over the pension plan with you in detail, did he not? A. Yes.

Q. And, he left only after there was nothing further to be asked him.

Isn't that correct? [415] A. That's correct.

Q. At this meeting on the 25th, at the same time that we made a proposal about the adjustment in the top rate of those classifications, which is listed in our notes, Respondent's Exhibit No. 5, did we not also propose that we would split the difference with the Union in reference to call in pay, since I believe you had proposed four hours and we had proposed two hours, and we agreed that we would pay three hours for reporting pay? A. Well, this is in your minutes on page 5, and we didn't contest this.

This was done.

Q. This was done? A. Yes.

Q. I see. A. We didn't question it.

Q. Didn't you make the statement at that meeting, at the end of the meeting, that you were not going to drag

along much longer, and wanted something definite by the next meeting?

Do you recall any such— A. No, I didn't say—

Q. You did not say anything— A. —that I was not going to drag along any longer?

Q. Yes. [416] A. No, I did not.

And, your statement is saying something else, other than this, too.

Q. Now, didn't you advise the Company committee during the afternoon that you had another meeting to attend, and you proposed the next meeting at that time for February 6? A. No, I don't believe this is so.

I have many, many meetings, as you know, that I have to attend, and I don't believe I proposed the next meeting be February 6. I mentioned that I had a wedding anniversary on February 3rd, that I would not be able to be—but, let's get together either before that or at some other time.

Q. I mean, this meeting was adjourned in the afternoon due to the fact that you stated you had another meeting to attend that day, and at the meeting of January 25, we set February 6 as the next meeting? A. We adjourned at 2:21, according to your notes, and I don't recall at this point if I did have another meeting—where it was at. I don't recall it.

Q. Did we not then set the meeting for February 6, at that time? A. I really don't—I couldn't say yes or no.

I do know the problem about my wedding anniversary on the third came up, and I suggested that we either get together earlier—and, I don't know—I can't recall [417] whether—when the definite date of February 6 was set.

But, there was still time between this January 25 and February 6—considerable time.

• • • • •

[418]

WILLIAM T. EDWARDS

having previously been called as a witness by and on behalf of the General Counsel and, having been previously duly sworn, was recalled to the witness stand and was examined and testified further as follows:

Trial Examiner: Mr. Edwards, you have been previously sworn.

The Witness: Yes, sir.

Further Direct Examination

Q. (By Mr. Mattson) Mr. Edwards, you were in the hearing room yesterday and today, and you heard Mr. McCall's testimony, concerning the meetings of January 6, 1967, and January 25, 1967, did you not? A. I have.

* * * * *

[419] Q. (By Mr. Mattson) Would you state generally at this time, do you recall that the negotiations progressed, that the parties took the positions as stated by Mr. McCall, during these two sessions? A. Yes, I believe Mr. McCall covered it accurately.

Q. Now, let us go back to see if there are any points that we can supplement, to the January 6 meeting.

That would be the resume by the Employer, Respondent's Exhibit No. 4.

And, I would ask you to check Respondent's Exhibit No. 4 first the first page, to see if you have any additional comments at this time.

What about——

Trial Examiner: Mr. Mattson, I gave you considerable opportunity to study these documents. You should have in [420] mind what you would want Mr. Edwards to testify to, and I am going to ask you to point out to him specifically what matters you want.

I will not entertain requests for a general looking over.

Q. (By Mr. Mattson) Let me direct your attention first, Mr. Edwards, to page 12 of the Employer's contract, General Counsel's Exhibit No. 9.

I believe your testimony had been previously that this was agreed to on December 19, 1966? A. No, I didn't testify to that.

Q. Will you explain this?

Trial Examiner: I am lost.

We are talking about—

Mr. Mattson: Article XX.

Trial Examiner: —Article XX?

The Witness: There was, I think, an allegation by the Company that that agreement of December 19 had been withdrawn, and it was not withdrawn.

Q. (By Mr. Mattson) Would you explain?

What was the situation with respect to this particular Article, from the first meeting of 11/28 through January 25? A. Well, of course this work by supervisors was not in our proposal.

Essentially what we had said in our proposal was that [421] a foreman would not be performing—should not perform bargaining unit work, except in cases of emergency, or actual instruction of employees.

And, the Company counterproposed on the 19th—that's the date on which Mr. McCall agreed to it.

Q. I see.

Now, after the 19th, what—was there any withdrawal by the Union of any agreement by the Union? A. Not to my knowledge.

* * * * *

[422] Q. (By Mr. Mattson) Now, the question I am asking here—Mr. Bowden had asked the question, whether the Union had withdrawn any prior agreement—either Mr. McCall or Mr. Edwards had withdrawn any prior

agreement reached on that Article during the meetings of January 6 or January 25.

Now, I am asking Mr. Edwards, did the Union withdraw any prior agreement? A. No.

Trial Examiner: In other words, whatever the discussion about supervisors was, it did not go to the question of work by supervisors, that the Union had agreed that supervisors could work?

Mr. Bowden: Well, Your Honor, I do not know.

It went to this Article, because that's the Article that it refers to.

Trial Examiner: Well, I can imagine that there might be a dispute as to what people should be classified as supervisors or not, but——

Mr. Bowden: That is correct.

But then, this indicates that because there was some dispute about who were supervisors, they withdrew their agreement to supervisors working.

[423] Trial Examiner: Well, both Mr. Edwards and Mr. McCall have testified that they did not withdraw their agreement that supervisors could work.

Now, could we get on to new matters, Mr. Mattson?

Mr. Mattson: Well, let me ask one more question on the January 6 meeting here.

Q. (By Mr. Mattson) At the conclusion of the meeting, did you make any suggestion with respect to forthcoming meetings? I understand that the Employer had discussed the prospect of bringing in Mr. Horovitz. What was said about the next meeting? A. Well, Mr. Bowden stated that they would like to have Mr. Horovitz at the next meeting, and that it would have to be worked out with Mr. Horovitz, that he couldn't tell us at the time when that meeting would take place.

And, I encouraged the Company to meet with us as promptly as possible. These meetings were occurring every week, or sometimes two weeks, and the Company was taking extensive recesses during these sessions, and we were not spending enough time at the table in bargaining.

And, I was urging the Company to meet with us more frequently, and that we should not have to wait on Mr. Horovitz, inasmuch as he was just going to be talking about one item, any how.

[424] Q. What was the Employer's response to this? A. The Company insisted that Mr. Horovitz should be at the next meeting.

Q. Did they indicate that the meeting would be scheduled when he was available? A. Yes, when he was available.

Q. Now, at either the January 6 or January 25 meeting, did the Employer make any response, as to its thoughts on arbitration? A. There was considerable discussion about the arbitration.

The Company's proposal was non-compulsory arbitration and was new to all three of us, I believe, at that table. And, I'm referring to, of course, the representatives. Mr. Nash was at the 25th meeting.

And, we tried to explain to Mr. Bowden that a grievance procedure would mean very little—in fact, the terms of the agreement would mean very little unless we were able to have compulsory arbitration, and that the Unions have been encouraged by responsible people of this country, our national leaders, and we felt by the Act itself, to avoid strikes.

And, Mr. Bowden's proposal of non-compulsory arbitration, especially with his vigorous condemnation of arbitration, as such, and arbitrators as a group, was pretty persuasive to us that he just would not arbitrate [425] grievances.

Q. Did he at anytime make any statement to this effect?

A. He never said that he would not arbitrate grievances.

He did say that they would not agree to mandatory arbitration, and this was in the meeting of the 25th, as I recall.

Q. Do you recall whether he made any remark, "under any circumstances"? A. Yes, I do recall this—he would not agree to that under any circumstances.

Trial Examiner: Mr. Mattson, the parties, I take it, never did—is there any dispute about both parties taking opposite positions, and never retreating from them?

Mr. Bowden: No, sir.

Mr. Mattson: No, I think——

Trial Examiner: Well, why are we bothering to go into it, then?

The Witness: I would point out that Mr. McCall suggested——

Trial Examiner: Well, any changes of position, I am interested in, of course, but I am not interested in—if there had been no change, if the parties took adamant positions, and there is no dispute about that, I see no need to go into that.

The documents should reflect that, and we do not need [426] extensive examination on those points.

Q. (By Mr. Mattson) I believe you were about to say that Mr. McCall made some suggestion? A. He had already suggested an alternative, that the parties could mutually select a permanent arbitrator.

Trial Examiner: A single arbitrator?

The Witness: A single arbitrator.

Q. (By Mr. Mattson) Was anything said about costs of grievances or arbitration?

Was there any discussion of this at this date? A. Well now, we're getting ahead.

There was other attempts by the Union to try to get the Company to change its position in arbitration, but not at this meeting, not at the 25th.

Trial Examiner: Well, tell us about the other meetings.

The Witness: Well, at the other meetings, and this gets on now into February, I believe——

Q. (By Mr. Mattson) Now, you may, Mr. Edwards, speak from your memory if you like, at this point, or refresh yourself. You may look at the Respondent's summaries, also. A. Well, I can recall this.

I suggested to Mr. Bowden that——

Trial Examiner: By the way, Mr. Mattson, I would prefer that witnesses generally testify on matters—at least, where they are going to testify in a general way as to what [427] happened—I would like that testimony before they have looked at notes.

The Witness: In trying to get the Company to make some kind of move on both its arbitration position and its no strike position, and noting that the two are not interlocked, there was no provision in the no strike clause which referred back to the Union's right to strike, after proper notice—in the arbitration section—I suggested to Mr. Bowden that we should drop both of them.

Now, this was not a proposal that I made with any——

Trial Examiner: Let's have the proposal, not your thoughts and motives.

The Witness: Okay.

I suggested that we drop both, that we would simply have no arbitration clause and we would have no no strike clause.

His immediate—his response was immediate—"no," that the Company's—both Articles were proper.

Q. (By Mr. Mattson) About what meeting did this occur? A. This was probably in February, either February the 6th or February the 22nd.

Q. Did you say February 7? A. I'm sorry—February 7th.

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[428] Q. (By Mr. Mattson) Was this at a later meeting?

Did he state this in the presence of the Employer—remind you that this was discussed with Employer? A. He told me that it had been discussed with Employer.

I don't recall him discussing it across the table. We were before the Federal Mediation at this time.

Q. Now, do you have any other comments on the—

Trial Examiner: I am not interested in general comments.

[429] If you have a specific question—

The Witness: On the 25th—

Trial Examiner: Just a moment.

Let Mr. Mattson ask a question.

Q. (By Mr. Mattson) During the meeting of January 25, do you recall the Employer being asked the question of how, under their proposal, the parties could settle any grievances, and the Employer's reply? A. Yes, I do recall that.

The Employer—Mr. Bowden's response was that we could use our economic strength, that we could strike as provided—we could strike the plant, or the Company could lock out the employees.

Q. Did they ever explain why they wanted the ten day limitation on your right to strike?

Did they ever give their position as to why they wanted that? A. I don't recall.

I don't recall an explanation.

Q. I ask you now to look at Respondent's Exhibit No. 5 and refer to Page 4, the first paragraph there.

I ask if you made the statement as indicated by these notes, and if there is any difference, what you did say?

A. (Examining document.)

Well——

[430] Q. Did you make any complaints? A. I discussed our alarm briefly with the Company.

I would take exception to the last sentence, that my posture and tone——

Trial Examiner: I have already said that I am going to disregard comments. Let's get to what you said and not your thoughts——

The Witness: I alerted the Company to the fact that we were concerned that the negotiations were scattered across weeks, and that the membership were restive at the delay, and were especially concerned about their position on seniority, on arbitration, physical exams, that we had to be able to represent the people honorably and responsibly, and we were not a dues collecting agency, and that we did not want a strike, we did not want a confrontation with the Company, but that we were seriously concerned now that they were not bargaining with us in good faith. And, I urged them to take a very serious look at the issues before us.

Q. I direct your attention to Page 3 of that same document, Paragraph G, the last sentence, wherein it says that the Company indicated that they would consider Mr. McCall's request. Do you recall whether this was the Employer's response, or what the Employer's response was? [431] A. So far as daily overtime alone, the Company's position was always no. I don't recall anything about time and a half on Saturday or double time on Sunday—their remarks to that.

Q. You do not recall their ever saying that they would consider it? A. No.

* * * * *

Mr. Mattson: Well, I would offer—I would make an offer of proof on this particular one, that the parties reached agreement on—general understanding—agreement on the language of a seniority provision which Mr. McCall—which it was then agreed that Mr. McCall would prepare and submit to the Employer at the next meeting.

Trial Examiner: He would testify to the same effect as Mr. McCall on that point?

[432] Mr. Mattson: Right.

Trial Examiner: I am rejecting it as cumulative.

Q. (By Mr. Mattson) Mr. Edwards, let's go to the February 7 meeting. That is the first meeting before the Mediator, is it not? A. That's true.

Q. Will you state what took place at that meeting? A. At this meeting Mr. Kazin, the Federal Mediator, asked for a review of the issues, and I made that initial review of the issues, in each one explaining what I considered to be the Company's position and what I knew the Union's position to be. And, at the same time, in making that review, I reduced our demand in a couple areas.

Q. Will you explain these concessions? A. There was a concession made on wages. I asked for 22 cents across the board for all employees, including the four classifications that had been discussed on January 25th; reduced our insurance demand to \$20 a day room and board, \$5,000 life, \$45 a week, sickness and accident insurance, \$450 maximum surgical, with the Company to pick up the additional expense over and above what the employee was paying at that time.

Q. May I ask here, by way of explanation, prior to this if the Union had asked the Company to bear the entire cost? [433] Had it not done so? A. Yes.

Q. Your initial request? A. Yes, for a very comprehensive insurance program, for the Company to bear the entire cost.

Trial Examiner: What other reductions?

The Witness: I believe we reduced our holidays from eight to seven; we agreed to the existing shift break, ten minutes.

Q. (By Mr. Mattson) Did you mention call in pay? A. We dropped that demand.

Q. Do you have any— A. I was talking about the whole issues before us, and I recall talking about the arbitration matter, again, explaining it to Mr. Kazin, and the no strike clause, which had the word, "permit." I explained to the Company that we would hardly be able to control a membership under great provocation, and that if we did, we would make every possible assurance in writing to the Company to try to prevent wildcat strikes, work stoppages—illegal work stoppages, and if one occurred, to do our very best to bring it to an end, but that the members under provocation, and especially without having a way to air grievances peacefully before an arbitrator, might very well strike under such circumstances, and that the Union, the International Union could very well [434] be unable to put them back to work immediately, and that the word, "permit," obliged us to do this, and being unsuccessful, we would be automatically in court.

Q. What about the Company's subcontracting clause? A. We agreed to the whole Management's Rights clause, with the Union suggesting—I suggested first of all that no subcontracting ought be done to discriminate against the Union.

And, Mr. Bowden said that he would agree to say that they would not contract out to discriminate against the employee because of his Union membership, and I believe we agreed to that, and that was then conceded, and we

agreed to the entire Management's Rights clause, as proposed by the Company, their Article II.

The Duration clause was discussed. The Union objected to the automatic 45 day extension in the Duration clause. I tried to resolve that by offering to come to the table as early as 90 or 120 days ahead of termination of contract, so that we would have plenty of time to negotiate.

Mr. Bowden's response to that was that that would be returning to the bargaining table too soon.

I then suggested that, well, we would buy the extension, the automatic extensions, if when the contract was signed during these extensions, that any economic benefits would be retroactive, and Mr. Bowden's response to [435] that was that the matter of retroactivity would be negotiable.

So, we reached no agreement on that.

Q. Now, when you made these offers to the Employer, did they recess and study this? A. Yes, the Company would recess.

Q. Now, after the recess, what was the Employer's position, let's say, on the seniority proposal that Mr. McCall had turned in? A. Their position on his seniority proposal was that it was too complicated, and they just would prefer theirs.

Q. That is the seniority proposal, document—Exhibit No. 10, I believe which is in evidence? A. Yes.

That's the five page document, I believe.

Q. All right.

What was the Company's position with respect to the Company rules?

What were the positions?

Was there any discussions?

A. There had been discussion about Company rules. Our position was that the Company, under traditional management's rights, had every right in the world to have reason-

able rules, and that that was, it seemed to us, a part of Management Prerogatives, which they were asking us to [436] bargain about, and that our simple—our position was a simple one, simply that if anyone happened to be disciplined, and viewing that case, that discipline, particular discipline case, that we would make an evaluation at that point, as to whether he had been fairly disciplined, and if we didn't think so, we would arbitrate it.

Our position was that we did not want the rules in the contract; however, we did go over those rules with the Company. We objected to a couple of the major rules. I think generally the rules were what you would expect, except for a couple of the major rules. The minor rules, we felt were—would lend themselves to rather subjective judgments by the Company, keeping in mind that the Company's position was very firm about arbitration—we would not have it.

We just didn't know quite how to cope with the rules, except to say—to point out to the Company that there were some rules that we didn't think were quite fair, and that in any event, they should not be a part of the agreement. We would recognize that they indeed have the right to maintain discipline.

Q. What was the Company's position on this daily overtime? A. Its position was no.

Q. Time and a half over 40? A. Well, they agreed to pay time and a half over 40, but [437] no daily.

Q. That was their position? A. Yes.

They were already paying time and a half over 40.

Q. What about—did something come up on shift differential? A. Yes, I believe the Company improved its shift differential two cents—possibly three cents for the second shift.

(Pause.)

I'm not quite sure of that.

Trial Examiner: Well, the Company's notes for the meeting of February 7 indicate that the shift differentials were increased by two cents on each shift.

Mr. Mattson: I believe Mr. Edwards has just testified that there was possibly three cents on the second shift.

Q. (By Mr. Mattson) Did you not, Mr. Edwards? A. At one point, I'm under the impression that the Company agreed to eight cents on the second shift.

Q. Did they at first come out with a two cent— A. It was first two, two and two—seven, ten and 12.

Q. That would be the second, third and split shifts? A. Right.

Q. Then, during the course of the meeting— A. I believe it was this meeting—I'm under the [438] impression that there was improvement of a penny.

I'm not real sure.

Q. What did the Company say as to the grievance procedure? A. Well, the Company had agreed to the grievance procedure, as worked out by the parties in previous meetings and submitted—resubmitted—rather, submitted in final draft by Mr. McCall.

Q. What about the amount of insurance?

Trial Examiner: Mr. Mattson, I would like to suggest to you where you have specific information in the Company proposals, and if your information is not different, that you put it in the form of a leading question.

In other words, on insurance, if it is correct that the Company stood on its proposal of increasing the daily room rate from \$9.00 to \$15.00 per day, you might ask him if that is so.

Q. (By Mr. Mattson) I will so ask you, sir. A. There was no improvement, no offer of improved life insurance or S & A.

Q. And, is it true that there was no change in the no strike—no lock out provision? A. There was no—the Company didn't change its position on that.

In the next one—well—

Q. Now, as to vacations? [439] A. This was a compromise between the parties.

We moved from 1500 to 1650, and the Company moved from their position at that time of 1700 to 1650.

Q. And, you reached agreement on what—1650? A. Right, we agreed on 1650.

Q. To qualify for vacation pay? A. Right.

Q. The Union asked for ten minutes for cleanup period. What did the Company offer? A. Well, the Company had a present practice of five minutes—a five minute period for returning tools, and they indicated—Mr. Bowden indicated they would continue that practice, but they would not give ten minutes.

Trial Examiner: I hate to keep on interrupting, Mr. Mattson, but I do hope to make some time on this, if we possibly can, and I am suggesting that what we are truly concerned with are changes of positions by the parties.

If there are not any, I see no point in going into something where the parties have not changed positions.

Q. (By Mr. Mattson) No change on safety committee? Is that correct? A. No, I don't recall any change on safety committee.

Q. No change on physical exam requirements, as I recall? My notes show—

Trial Examiner: I have just suggested to you, Mr. [440] Mattson, that you go into questions where there was a change.

Otherwise, we will assume that if there is a change—if the Company improved its position, they will presumably bring it to my attention.

Q. (By Mr. Mattson) Mr. Edwards, what about call in pay? A. We dropped—this was—we no longer had this before the Company at this time, I don't believe.

It was merely a matter now of reporting pay, and the Company agreed to four hours.

Q. Now, what about—did the Union recess and come back with any proposal on wages? A. Well, we recessed, to write a change in seniority, and during this little recess, we resolved to drop our wage proposal two cents, from 20—from 22 to 20.

Q. And, is this also when you prepared the seniority draft, General Counsel's Exhibit No. 12, which was then returned to the Company, after the recess? A. I believe so.

Q. When you came back from the recess, was there any change stated by either of the parties on wages? A. Well, I indicated that we would—we were dropping our wage proposal from 22 cents to 20.

Q. Did the Company come back with any offer? A. No.

Q. Was there any discussion about eight cents across the [441] board at this meeting, or was that at a later meeting? A. The Company offered eight cents for all the other people, but I don't recall if it was this meeting or the next one.

I believe it was this one.

Q. This offer that they made of eight cents.

Was that across the board, except for these higher categories they had previously mentioned? A. Yes.

They proposed to leave those as they had previously proposed.

Q. And, I believe you have already said that the Union eventually agreed at this meeting to the automatic extension—or did they?

Is that correct?

Did you finally reach agreement? A. Would you repeat that?

Q. Did you agree to the Employer's automatic extension? A. In the Duration clause?

Q. Or did you not? A. No, we didn't.

We didn't agree to that at this time.

• • • • •

[442] Mr. Mattson: Your Honor, with respect to the next meeting, I think we now come to the February 13 meeting—I reviewed the notes, and I think the positions of the parties are substantially, with respect to the limited questions that you want us to pursue, fairly accurately reflected therein, since we do not get into these side comments, so I am agreeable to stipulating to the relative positions of the parties, as going through the notes, as essentially accurate in this respect.

And, the reason I do so in this form is that I believe Mr. Nash is ill, is recovering from an operation—he has heart ailment at the moment.

Trial Examiner: Well, you are prepared to stipulate then that the Company's notes, with respect to the relative bargaining positions on the various issues—of the parties is correct?

Mr. Bowden: This is as of February 13?

Trial Examiner: This is the February 13 meeting?

Mr. Mattson: There is only one thing, if I may.

No, no, we are all right. I thought I had some notes on that.

[443] Trial Examiner: All right.

Are you willing to stipulate?

Of course, Mr. Bowden, I take it you are willing to so stipulate.

Mr. Bowden: Right.

Trial Examiner: All right.

The stipulation is accepted, that the notes for the meeting of February 13, 1967, accurately reflect the positions of the parties on the various bargaining issues.

Mr. Mattson: I beg your pardon, sir, but for the record, was that February 13?

Trial Examiner: That was the February 13, 1967, meeting.

Mr. Mattson: Thank you.

Q. (By Mr. Mattson) Now, Mr. Edwards, I direct your attention to the meeting of February 22, which my notes indicate lasted from about ten o'clock to about noon.

Would that be the best of your recollection? A. That's approximately right.

Q. Did the Employer have the same committee there as usual?

Trial Examiner: Well the minutes show who were there for the Company.

The Witness: Yes, apparently.

Q. (By Mr. Mattson) Will you state what the Union [444] proposed at the outset of that meeting? A. At this meeting, Mr. Bowden asked if the Union had any concessions to make, and as a matter of fact, we had prepared to come into that meeting and try to make a package offer of settlement, and the items of that offer of settlement are here, and the only thing I would say, to add to those items, is that that would represent an elimination of all other issues.

Trial Examiner: In other words, if the Company accepted your proposals as outlined here, on holidays, overtime, wages, insurance and on non-economic matters, you were dropping all claims with respect to any prior demands?

The Witness: That's true.

Trial Examiner: Is there any dispute about that, Mr. Bowden?

Mr. Bowden: I was reading, but we will say, as I understand his remarks, where they are substantially as set out in our Meeting No. 8, which is Respondent's Exhibit No. 8—is that what you were reading from, Mr. Edwards?

Trial Examiner: These were the only open matters.

If they could be resolved, the contract could be agreed on—that is not quite what Mr. Edwards has now said, as I read it.

He has now testified that he said that if these demands were accepted, the Union would sign a contract eliminating [445] all other requests.

The Witness: I want to point out that there was a little wobble at this point.

I inadvertently, in stating those first issues, left check-off out, and when the Company recessed, I asked Mr. Kazin to go right after them and tell them to please put check-off in those items, and he was unable to find them.

But, as soon as they came back from the recess, I alerted them to that and Mr. Bowden indicated that he thought that we had probably wanted check-off.

Now, I must say this, that while I was clearing all other issues, there would still have been some writing to do. The Company had never discussed the terminology and the language of check-off with us, but had merely indicated by now that there would be no block to an agreement.

This worried me a little, because we had not discussed—

Trial Examiner: Now, basically your proposal to the Company at this time was, "If you accept these matters on which we are still in disagreement, we will accept

your proposals on all other matters on which we are still in disagreement”?

The Witness: True.

Q. (By Mr. Mattson) And, the Company's response?

A. The Company recessed, and they made their response.

Trial Examiner: Did they accept any of these?

[446] The Witness: I was just looking.

I think these notes are pretty accurate.

(Examining document.)

The only thing I would say here—under Item 3 of the Company's response B-3—is in the seniority section that we had proposed departmental seniority in new Paragraph C—would have had an effect on Paragraph A of the Company's proposal, where jobs—where departmental classification seniority was noted, and that would have required that word, “classification,” be dropped in Paragraph A of the Company's seniority proposal.

In Item No. 4, Mr. Bowden had previously indicated that he would add that language in the Management Rights clause, as it pertained to contracting out work.

Trial Examiner: Mr. Edwards, on B-2, non-economic matters, the language is, “The Union wants——”

I am sorry—on B-1, “The Union urges the Company to accept their traditional arbitration clause.”

What explanation was offered to the Company as to what you meant by, “urges”?

Were you insisting? Would you have accepted a contract without the traditional arbitration clause?

The Witness: We were willing to modify it to the extent, some way, either by sacrificing economics, or as to the clause itself.

[447] Trial Examiner: Did you tell this to the Company?

The Witness: I never said to the Company how much.

Trial Examiner: Well, no——

The Witness: What is it you want?

Trial Examiner: Did you tell the Company what you were willing to trade off, if they would give you the arbitration clause?

The Witness: Not directly, sir.

I thought I was doing that by continually modifying our demand, dropping our——

Trial Examiner: Well, anyway you were not dropping your demand for compulsory arbitration, as such?

The Witness: In some form or another, we would like to have had an arbitrator hear a grievance.

We were just——

Trial Examiner: I am not interested in thoughts.

I just want the position——

Q. (By Mr. Mattson) I believe you did testify, Mr. Edwards, have you not, that previously you mentioned dropping arbitration and no strike? A. We'd offered to drop the whole thing, no strike and arbitration, both.

Q. Did the Employer make any concession, then?

It rejected your proposal, and did they make any concession? [448] A. They generally rejected the proposal, and I'm just looking to see——

(Examining document.)

I don't recall a concession that hadn't been previously made.

(Pause.)

You see, they offered to have the rules embodied in a separate letter, but to us, that's contract, too, as well as the document itself.

Q. On check-off, is it true that the Company said that this might depend on whether you would accept the Company's offer? A. Yes, that's true.

(Pause.)

I might say that Rule No. 3 is not mentioned here, in the major rules, which was of concern to us.

(Pause.)

I'm sorry—it is not Rule No. 3; it is Rule No. 5, "Conviction of a Crime, the nature of which would be calculated to render the employee undesirable as an associate or co-worker."

We rather thought—who's going to make that evaluation?

Trial Examiner: Well, there was no agreement on a rules clause?

The Witness: Well, it merely mentioned that Rule No. 10 [449] was the only one discussed—Rule No. 5 was also discussed.

Q. (By Mr. Mattson) Now, the meeting was adjourned, and did the Union indicate whether it would take up—that it would then take up the Employer's contract offer, at that time, with its membership? A. Yes, we advised the Company that we would take their offer to a general meeting of the membership, and review it.

Q. And, did you do so? A. We did.

Q. Was that on or about February 26? A. That's approximately correct.

It was a Sunday—Saturday or Sunday.

Q. And, did the membership accept or reject the proposal? A. The membership turned it down.

Now, in discussing this—

Trial Examiner: Is this relevant?

Mr. Mattson: I think just one more question, sir.

Q. (By Mr. Mattson) What action was recommended here, at this time? A. Well, the membership, after reports by the committee and the staff, resolved to strike.

And, they resolved to strike on the ground that the Company had not bargained in good faith.

* * * * *

[450] Q. (By Mr. Mattson) The meeting on March 14, which you attended, began about 10:15? A. That's true.

Q. At this particular meeting, is it true that only Mr. Bowden and Mr. Pearsall were there? A. That's true.

Q. Were the usual Mr. Madison and Mr. Peacock absent? A. True.

Q. You came into the meeting—when you came in, what was the initial discussion between the parties? A. There was some preliminary discussion—the strike was in process at this time, and some of the employees were having trouble with their paychecks and withdrawing money from the credit union.

Q. All right.

Now, I will stop you here, because it may not be too relevant from the Judge's view point.

There was some discussion of the strike problems with employees, the paychecks and whatnot, possibly some discussion by the Union of firearms, which the Union might have [451] been concerned with? A. That's true.

Q. But now, let's go as to the parties' negotiations on the issues.

Was anything presented at this time? What did Mr. Bowden say or do with respect to negotiations?

Trial Examiner: Well, did the Union reduce any of its demands from the February 22 meeting?

Did it offer any further concessions at the March 14 meeting?

The Witness: I don't think so.

Trial Examiner: Did the Company?

The Witness: The Company made no offer, that I recall.

Trial Examiner: The parties' positions were the same at the end of the March 14 meeting, as before it started?

The Witness: That's essentially true.

Trial Examiner: I am not precluding you, Mr. Mattson, from correcting any portions of the summaries, which you consider inaccurate in material ways.

Q. (By Mr. Mattson) On Respondent's Exhibit No. 9, Mr. Edwards, in Paragraph III, Sub-paragraph No. 1, it indicates that you stated in contrast to Mr. Bowden's letter, that the Union and Company are not in agreement on Seniority.

What are you referring to there? [452] A. Mr. Bowden had written a letter, in which he said he thought the parties were in agreement on seniority, but he had not dropped classification, and I just reminded him that we were not in agreement, because he was still saying, "Departmental Classification," and we were saying, "Departmental."

Q. You had agreed to their "Department," but not to "job classifications"? A. True.

(Pause.)

I might say in looking—we haven't had a chance to go over these—these last couple or three——

Trial Examiner: Well, Mr. Mattson has had the opportunity, I presume. He is conducting the examination.

Mr. Mattson: Excuse me, sir.

Q. (By Mr. Mattson) Sir, unless you happen to know something yourself which is a glaring error, I have no question on this. A. I'm just not sure of all of these quotes back here that the Company attributes to the Union.

Q. I understand—this is not the negotiations; these are side comments.

Trial Examiner: These are side comments, and insofar as comments are concerned——

The Witness: Very good.

[453] Trial Examiner: ——I have indicated that I am going to disregard them.

The Witness: Very good.

Q. (By Mr. Mattson) Now then, the next meeting after March 14 was May 1? A. Right.

* * * * *

Q. (By Mr. Mattson) I think we progressed, Mr. Edwards, before the recess to the May 1 meeting? A. Right.

Q. And, at this meeting, is it correct that there were only two Company representatives—again Mr. Bowden and Mr. Madison? A. That's true.

Q. Rather than the usual four? A. True.

Q. Upon the opening of the meeting, did anybody make any comments as to whether there were any concessions or not? [454] A. No, the Company had made no changes in its position.

Trial Examiner: What changes had the Union made?

The Witness: We were trying in this meeting—we were talking in the areas of seniority, and we tried to work our way out of the physical examination demand that the Company'd made.

And, I believe at this meeting—well, the Union suggested that we use—that we would agree to the Company's physical examinations, providing that they would let us have an opinion of another doctor and medical arbitration.

There was considerable discussion on that matter, and Mr. Bowden indicated some interest in it, but there was not any firm agreement about medical arbitration at that meeting.

Some discussion on seniority, but essentially the positions did not change.

Q. (By Mr. Mattson) How about the Union—at this meeting, did the Union reduce its wage offer in any sense? A. Yes, the Union reduced its wage offer from 20 cents to 18 cents.

Q. And, that was across the board, was it not? A. Across the board.

Q. Except for—— A. Except for the top four classifications.

Q. Which, I believe, the Employer indicated it was [455] agreeable to pay at a higher scale? A. The Company had offered that, yes.

Q. Did the Employer recess and discuss this—discuss this with Mr. Kazin? A. I think so.

Q. Did he report on this, whether there was any change or not? A. Mr. Kazin did tell us that it appeared that the Company had no change in its position.

Q. So, what—the meeting was adjourned at that time? A. The parties were called back together and adjourned, yes, sir.

Q. Now, then, I think the correspondence is already in the record—which ensued at this time between the Employer and the Union, and eventually, the next meeting—the final meeting takes place—the last meeting of record is August 7, 1967.

In negotiations, did Mr. Bowden ask the Union—— A. Mr. Bowden asked—said that the Union called the meeting, and had it any concessions to make.

Q. What did you respond? A. We responded with concessions, and I believe they're all noted here.

(Examining document.)

I want to call attention to No. 1—that is not [456] correct.

The Union—it says that we would drop our request for Intent and Purpose, if the Company will accept the Union's Arbitration Clause.

We simply dropped our demand for Intent and Purpose.

Q. With no contingency—a straight drop? A. No contingency.

(Pause.)

We did agree to put the rules in the contract, with a modification of the penalty for second offense, and we suggested, I believe, changing the word, "shall"—where, "An employee must be fired," to "may"—

Q. "The Employer may fire——" A. Yes.

(Pause.)

We agreed to the Company's offer on insurance, except that I believe we wanted them to pick up the rest of the cost.

Q. Did you agree to the Employer's physical provision? A. We agreed to the physical, and Mr. Bowden agreed to medical arbitration.

Q. In other words, you agreed that there would be medical arbitration? A. Right, but that the Company could insist on anybody at any time take a physical.

[457] Q. By "medical arbitration," you mean that they could call in a third doctor? A. If there was a disagreement on the part of an employee, as to his doctor, we would then have a third doctor, a specialist in the area of the ailment.

We dropped our request for a seventh holiday, and agreed to the existing holidays.

We still wanted departmental seniority, daily overtime.

Q. Now, is it correct that about the time you indicated to the Employer that you dropped your Intent and Purpose, having numbered a few concessions, that the Em-

ployer again asked if there were any more concessions?

A. That's true.

Q. And, you answered what—yes? A. Well we—

(Pause.)

Q. Did you name some more? A. We named some more. I continued—I think I've covered them.

Q. My notes indicate now that you have covered them, yes, sir.

Now, what was the Company's response?

Did they— A. The Company recessed for an hour—an hour and five [458] minutes, and came back with their response, generally negative.

Q. Did they make any concessions? A. Well, they agreed to our six—that we could drop the seventh paid holiday.

Q. Now, aside from the fact that they agreed to your concessions, is it correct that the only agreement they made here was that they would agree— A. To medical arbitration.

Q. —to medical arbitration? A. Yes.

Q. And, also that they would put in the word, "authorize," in— A. That's right.

At this point, Mr. Bowden said—and although we hadn't discussed it, he said that he would like to change the word, "permit," to, "authorize," in the No Strike Clause.

Q. Now, how about under the subcontracting clause, that article that you had been asking for, not to subcontract for discrimination? A. That had been previously agreed to.

He indicated that they were still in agreement.

Q. Oh, I see.

Now, were you asked if there were any more concessions? A. I was asked if the Union had anything else.

[459] Q. What did you say? A. I told him that if we could think of anything else, that we could concede, short of capitulation, that we would be back in touch with him.

Q. That was about the end of the meeting? A. That was about the end of it.

Q. Now, I believe your document speaks for itself, your letter of August 8, right after the meeting, where you then make an offer to reduce your wage rates again.

Is that correct? A. That's right.

We reduced the wage rates—I did, by letter—to 15 cents—that's all others, except the four classifications, which we were agreeing to the Company's offer.

I asked for some information in that letter, as I recall, too.

Q. Now, during this correspondence, you asked for the area survey that had been discussed.

Now, General Counsel's Exhibit No. 7 is Mr. Bowden's letter to you, attaching Mr. Madison's letter dated June 12, a two page letter which is marked as General Counsel's Exhibit No. 7 (a).

Now, is that the only document which was furnished you, furnished to the Union, which is represented by the Employer as being its survey—those two pages? [460] A. Yes, that's right.

Q. No other documents or cost figures, or any other analysis? A. No, that was it.

Q. You had been asking for the names of all employees on the job, and their pay rates? A. We wanted to know the names of the employees.

We had been hearing that there had been raises granted over and above—

Mr. Bowden: Your Honor, this is all covered in the correspondence—he is referring to the letter.

Mr. Mattson: Well, we will let the documents speak for themselves.

Q. (By Mr. Mattson) You did refer to these in the documents.

Was any of this information ever furnished to you, Mr. Edwards— A. No.

Q. —that you requested? A. No.

There was also a statement that Mr. Nash and Mr. Bowden had at the conversation—about the strikers.

And, Mr. Bowden said that some of the strikers were guilty of misconduct on the picket line, and they would not be returned to work.

[461] And, Mr. Nash asked him if he was referring to those employees who had been convicted—some six, and Mr. Bowden said no, that was not the only measure of misconduct.

And, Nash asked him, who was he talking about, and he didn't know, of course, at the time, and I think I asked in that letter, "Who are the employees the Company has in mind, who were guilty of misconduct, and what was the nature of the misconduct?"

Trial Examiner: This is all covered by the letters.

Mr. Mattson: I will ask a concluding question.

Q. (By Mr. Mattson) Was this ever furnished to you, Mr. Edwards? A. No, it was not, never furnished.

Q. One more question.

There has been testimony that there were pay raises granted around September or October.

At the beginning of the strike, was the Union ever requested for permission to put these wage rates into effect? A. I was never contacted, and I have not been able to determine any other staff representative that has been notified.

Q. Did Mr. Bowden ever write you a letter—or the Employer—

Trial Examiner: I believe we have had a stipulation on Mr. Bowden's part that there had been no notification to the Union.

[462] Isn't that correct?

Mr. Bowden: That is correct.

Trial Examiner: All right.

Q. (By Mr. Mattson) Did Mr. Bowden ever send you a letter notifying you that it was his belief that there was an impasse? A. No.

* * * * *

[463] **Further Cross-Examination**

Q. (By Mr. Bowden) Mr. Edwards, in reviewing your direct testimony with the General Counsel, except for those items which you noted in your examination, and possibly the opinions of the writer, you agree with those notes? A. I think they're fairly accurate.

Q. I see.

Do you remember the discussions, for example, in several of the meetings in reference to the non-compulsory arbitration, when I brought to your attention that a Steelworkers local in Roanoke had signed such a provision—Brenco, Inc., in Petersburg, Virginia, and invited you to get in touch with them? A. I recall you stating—and, I think you were addressing your remarks to Mr. McCall—

[464] Q. Yes. A. —That you had signed an agreement with the Steelworkers that had a non-compulsory arbitration clause in it.

Q. And, I believe I told you the name of the company—

Mr. Mattson: Object to the relevancy of this.

Trial Examiner: Overruled.

Q. (By Mr. Bowden) Didn't I? A. I don't recall you mentioning the name of the company or that we should get in touch with them.

You could of mentioned it, now, Mr. Bowden but I just don't recall.

Q. Do you recall during the same conversation, also, I directed your attention to other unions, other than the Steelworkers in this area, who had similar provisions in their contracts, such as RWDSU, the Teamsters? A. I remember you mentioned the RWDSU, but not the Teamsters.

Q. Now, since the meeting, which I believe was the eleventh meeting, which occurred in August of last year, August 7, I believe was the date of the meeting— A. The last meeting was August 7th.

Q. Yes. A. Yes, sir.

Q. There have been no requests by the Union for further meetings, have there? A. No, we've requested no further meetings.

[465] Excuse me. I wrote you a letter the next day, after that meeting, altering our proposal.

Q. Yes.

Well, that letter has been introduced and is in the file. A. Yes.

Q. Then, is it the Union's position now, and after the last meeting, with the exception of your proposal in your letter, and proposals that you might have made during the course of the bargaining, that the original proposals, your proposal that you gave us, are still the proposals of your Union, insofar as these items are concerned?

Do you understand what I am saying? A. That is the last—

(Pause.)

Q. I will put it like this. A. —outstanding issues?

Q. Yes. A. Plus the modification of that letter—are those still the outstanding issues?

Q. Well, maybe I started the wrong way.

That your original proposal on the various items, except as modified either in negotiations or by letter, are still your Union's proposals on open items? A. Yes, we've made no other proposals.

[466] O. Now, would this be true on your No Strike clause, your Termination clause—

Mr. Mattson: I object.

Q. (By Mr. Bowden) —Check-Off and—

Mr. Mattson: I object to this testimony.

It is going over the negotiations—it has been expressed, what has been said by the parties.

Trial Examiner: I do not understand your objection.

But, obviously the economic issues between the parties have never been resolved.

Mr. Mattson: We are not negotiating at this table here. This is all I can see—what are the positions?

Trial Examiner: Your objection has been overruled.

Q. (By Mr. Bowden) I said, this would include your original contract proposals. A. Well, there's very little left of our original contract proposal.

We've primarily—towards the end, after the first couple of meetings, we were working primarily from your proposals, and we—I don't know how to answer your question, except, perhaps, this way Mr. Bowden.

We had arrived at the point where we were convinced that no matter what we did we were not going to get a contract with your client.

Q. Yes? [467] A. And, we borrowed a page out of your book; we were waiting for some litigation.

We are still prepared to bargain in good faith.

Q. Well, you made no other proposal, for example, on your No Strike proposal, other than your original proposal? A. (Pause.)

I don't personally recall making any alterations in that proposal.

Q. Would that be true on your Check-Off proposal? There has been no other Check-Off proposal, other than the one furnished in your original proposal? A. Well, that's true.

But, you must remember that you didn't bargain with us about the language of that proposal.

Trial Examiner: The question simply is, there were certain proposals that you made at the outset of bargaining, and you are now being asked if these are still essentially the same proposals at the end of bargaining.

The Witness: That's true.

Q. (By Mr. Bowden) All right.

Now, directing your attention to General Counsel's Exhibit No. 8, Paragraph No. 4.6 and Paragraph No. 4.7—that would be on Page 3—I will ask you, is Florida a Right to Work state, to your knowledge? A. It is.

[468] Q. And, I will ask you if you have ever received an opinion, or did you seek an opinion from your attorney, as to the legality of this type of proposal, in this statement?

Mr. Mattson: I object, Your Honor.

This has never been raised as an issue during the negotiations. The contract speaks for itself.

Mr. Bowden: I can ask him if he has an opinion.

This is a legal provision that they are proposing.

Mr. Mattson: Well, whether he has an opinion or not, the proposals they have offered are there.

Trial Examiner: The objection is sustained.

You are not contending, Mr. Bowden, that the Union was not seeking a contract?

Mr. Bowden: No, I am pointing out that in the proposal they have unlawful provisions, one of which they claim has remained unchanged, and one of the reasons we do not have an agreement.

The Witness: No.

Trial Examiner: You may argue that in your brief.

Q. (By Mr. Bowden) Mr. Edwards, as a matter of fact, you have such a provision in your Southeastern Valve Corporation contract, such as this clause that we have just mentioned, have you not?

Mr. Mattson: I object to the relevancy.

The Witness: I have no knowledge of—

* * * * *

[470]

FRAZIER RHODEN

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

* * * * *

[471]

Direct Examination

Q. (By Mr. Bowden) Mr. Rhoden, what is your position with Florida Machine and Foundry? A. Foundry fore-
~~man~~

Q. Now, do you recall a union election in 1966, with the Steelworkers? A. Yes.

Q. Prior to the election of 1966, did you receive any instructions on how to conduct yourself in that election campaign? A. Yes.

Q. How were you told? A. Well, not to threaten the employees, not to intimidate them—the employees, or anything like that.

Trial Examiner: Would you keep your voice up, please, Mr. Rhoden?

The Witness: Yes.

Q. (By Mr. Bowden) All right, sir.

Do you know an employee by the name of Harold Mays? A. Yes.

[472] Q. Mr. Mays testified that shortly before the election, that you——

Mr. Mattson: I object to the leading question here. I think the subject should be brought up without a direct leading.

Trial Examiner: I am going to permit Mr. Bowden to ask the question as he wishes.

But, I will tell him that I do not give too much weight to leading questions. If this is only by way of preliminary, that is up to you to judge.

Mr. Bowden: Yes, sir.

I am trying to fix an incident, and I can do it a lot easier by——

Trial Examiner: But, if you describe the exact testimony, it perhaps might affect the weight of his testimony.

Mr. Bowden: All right, sir.

I am attempting——

Trial Examiner: Well, let's try to get it in without actually telling him exactly what he has been alleged to have said.

Perhaps you can ask him if he had a conversation about the Union, and if so, what was said.

Q. (By Mr. Bowden) Did you ever see Mr. Mays at his home? A. Yes.

Q. And, about when was this? [473] A. Well, it was sometime last summer.

I don't know the exact date.

Q. Are you talking about 1967 or 1966? A. (Pause.) 1966, I believe.

Q. Was it before the election? A. Now that—I couldn't answer truthfully.

Q. All right, sir.

And, under what circumstances did you see Mr. Mays at that time? A. Well, it was one Sunday afternoon.

As usual, my wife and myself, after lunch, we'd go riding. We always like to ride out Heckschere—

Q. That is Heckschere Drive? A. Yes.

Q. All right. A. So, we rode out there to a little island, where it was cool, and there were people fishing, shade trees out there, and when we started home—I don't remember just what time it was—we was just riding along, and I saw Mr. Mays in his yard.

Q. Now, does Mr. Mays live on Heckschere Drive. A. Yes—or he did then.

Q. Yes? A. So, on the spur of the moment, I just decided that I wanted to talk with him.

[474] Q. All right, sir.

What happened? A. Well, I pulled in his yard.

He come out, and I says, "Harold, I'd like to talk with you."

He said, "Okay."

I got out. We walked on his lawn, and I squatted down. I said, "I hear you're a leader in the—active in the Union out there?"

He says, "Yes."

Well, I said, "I'd like to talk with you about changing your mind or your activities."

He said, "How?"

I said, "Well, you worked there a long time before, and you decided you wanted to go in business. You had a retirement built up. You taken that and went in business. It didn't pan out, and then later on, you come back to work for the Company. The Company hired you, and they give your son a job during the summer—during his vacation period."

I said, "That's what I'd like for you to change your mind about."

He said, "Well, it's probably gone too far."

And, I got up then and I said, "Well, let me ask you this. If it goes far enough, a walkout, would you walk the line?"

[475] He said, "No, I'd get a job and go somewhere else."

And, I'd got up, and I said, "Well, Harold, I just believe I wasted my time."

I got in my truck and I left.

Q. Did you during that conversation tell Mays that the Company would never sign a contract with the Union?

Mr. Mattson: I object.

Trial Examiner: Objection overruled.

Q. (By Mr. Bowden) Did you hear my question?

Mr. Mattson: The witness has not shown, Your Honor, for the record if I may, that he has exhausted his memory.

Trial Examiner: The objection is overruled.

Q. (By Mr. Bowden) Did you during the course of your conversation with Mays state to him that the Company would never sign a contract with the Union? A. No, sir.

Q. Did you have any conversation with him in reference to a contract, or what the Company might do in negotiations? A. No, sir.

Q. Did you know? A. No, sir.

Mr. Bowden: No further questions.

Cross-Examination

Q. (By Mr. Mattson) Mr. Rhoden, how long have you been employed by Florida Machine and Foundry Company? [476] A. 9th of December, be 28 years.

Q. How long had you been a foreman, up to the time of the election? A. I would say about 21, maybe 22 years.

Q. In addition to talking to Mr. Mays, did you talk to other employees the same way? A. No, sir.

Q. The only employee you decided to talk to about the Union was Mays? A. That's right.

Q. Was it your desire at that time to convince him to vote against the Union, to keep the plant union-free? A. Well, there was no mention of voting, or anything.

Q. I am asking you, was it your decision to talk to him in an effort to keep the plant from being unionized? A. Well, I don't know as you could put it that way.

Q. How would you put it? A. Well, I just—on the spur of the moment, I wanted to talk with the man.

Q. You wanted to talk to him about union? A. Well, about changing his views—that's all.

Q. And, you do not know why you did this? A. No, sir,

Q. Did you have any interest in employees not voting for the Union? [477] A. No, sir.

Q. Were you opposed to the Union entering the plant or winning the election? A. Well, now, I'd have to say yes, sir.

Q. And, how many employees are there in the plant—were there over 300 at that time? A. Well, I couldn't answer that truthfully.

I'd say there was around 300.

Q. And, you say you made—you only decided to try to get one vote out of all of these employees to go against the Union? A. Well, I don't know as I was trying to get a vote, no, sir.

Q. You were not trying to convince Mr. Mays to vote against the Union? A. I just—I merely asked him to change his mind.

Q. Did you discuss with him the reasons why he should change his mind? A. Well, I explained that awhile ago.

I didn't say that was why, but I explained that to him.

Q. You gave him an argument why he should change his mind and vote against the Union?

Trial Examiner: Mr. Rhoden on direct examination described his conversation.

I think it is plain that both men understood there was an election, and that Mr. Rhoden would like it if Mr. Mays [478] changed his mind about being a union supporter.

I think that is clear.

Q. (By Mr. Mattson) And, you spoke to no other employees in the plant about union? A. No.

Q. Do you know whether other officials in the Company were talking to employees about the Union in their offices prior to the election? A. They conducted a campaign, yes, sir.

Q. Do you know that they were calling in employees—into their offices? A. Yes.

Q. Do you know what they were discussing in the offices? A. No, sir.

Q. Did you ever inquire about what was going on in the offices? A. No, sir.

Q. Did anybody ever tell you what was going on there in the offices? A. No, sir.

Q. Were you interested in what was going on in the offices? A. Yes.

Q. And you never asked anybody about it? A. No, sir.

Q. Were people who were under your supervision called into [479] the office? A. Yes, sir.

Q. When was the last time you saw Mr. Harold Mays prior to this time you tried to convince him? A. When he came back to work.

Q. Only at work? A. Only at work.

Q. When was the last time you were ever at his home? A. That was it.

Q. Before that, have you ever been at his home? A. No, sir.

Q. Never? A. Oh, I guess it was back 10, 12, 15 years ago, when he lived out by the ballpark.

Q. Now, this has been about two years ago, that this conversation took place.

Is that correct? A. Well, it was during the summer of '66.

Q. Do you recall everything that was said at that time? A. Yes, sir.

Q. Absolutely everything? A. Yes, sir.

Q. Did you discuss this testimony with anyone before coming in here and taking the stand as a witness? A. Yes.

[480] Q. Whom did you talk to? A. Mr. Bowden.

Q. Did you talk to anybody else? A. Mr. Thomas Peacock.

* * * * *

[481]

SANDY JAMISON

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

* * * * *

[484] Trial Examiner: I take it that Mr. Jamison has been called with respect to testimony about certain statements that he has allegedly made that may reflect on the bargaining?

Mr. Bowden: Yes, sir.

Trial Examiner: I am not going to rely on statements from Mr. Jamison as reflecting the Company's position.

Mr. Bowden: I understand that.

But, this Gillyard—I am assuming that you are not going to——

Trial Examiner: I do not think that Mr. Jamison or Mr. —well, Mr. Jamison is in a position to reflect the Company's attitude.

Mr. Bowden: I agree with you.

But, there are statements made that he made—now, if it is not necessary to rebut that statement, then we will take him back.

Trial Examiner: I am saying that it is not necessary to rebut the statement.

I am not going to rely on the positive testimony, or the [485] testimony of Mr. Gillyard, as establishing—as having a bearing on the Company's subsequent bargaining.

Mr. Bowden: Well, then, I will withdraw this witness.

Trial Examiner: That is the purpose——

Mr. Bowden: Yes, sir.

Trial Examiner: ——of my statement to you, Mr. Bowden.

Mr. Bowden: Yes, sir.

Will you step down, then, Mr. Jamison?

You are excused, and thanks for coming up.

Trial Examiner: Thank you, Mr. Jamison.

(Witness excused.)

Mr. Bowden: Your Honor, in light of that statement you just made——

Trial Examiner: Now, it depends on the nature of the position the man holds with the Company.

Mr. Bowden: I see.

Well, I thought maybe I might check—

Trial Examiner: No, so far as minor supervisors are concerned, they may reflect what they think. The Company, perhaps, in certain circumstances might be held responsible for their statements, but it is my own view that minor supervisors do not—their statements are not ordinarily such, as to bind the Company, with respect to bargaining position.

Mr. Bowden: All right, sir.

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[486]

LUKE MORGAN

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Mr. Bowden) What is your position with Fleco Corporation, sir? A. Production manager.

Q. Do you recall the Union election in 1966, in which the Steelworkers were involved? A. Yes, sir.

Q. Along with other supervisors, did you receive any instructions as to how to conduct yourself during the campaign? A. Yes, sir.

Trial Examiner: I am going to consider this testimony cumulative, and I am going to assume that all witnesses who would be called to testify with respect to instructions would testify that they were told not to talk about the Union to employees.

[487] Mr. Bowden: Thank you very much, sir.

All right.

Q. (By Mr. Bowden) Then, I will ask this question.

After the election, did you receive any further instructions about your conduct during the negotiation period?

A. Yes, sir.

Q. Were other supervisors with you at that time? A. Yes, sir.

Q. Do you recall what those instructions were? A. Yes, sir.

Q. What were they? A. They were to conduct our jobs and carry on the work, and that was all.

Q. Were you given instructions about refraining from expressing any views—— A. Yes, sir.

Q. ——in reference to the negotiations? A. Yes, sir.

Q. All right, sir.

Now, do you recall a strike that occurred around March 1, 1967? A. Yes, sir.

Q. Now, at that time, were you as a supervisor, together with others, given additional instructions at that time? A. Yes, sir.

[488] Q. And, what were those instructions? A. They again were to continue our work.

We were to continue our operations, and we were to confine ourselves to this.

Q. Did you receive any instructions in reference to employees contacting you or—— A. Yes, sir.

Q. ——attempting to contact you? A. Yes.

Q. What were your instructions in that respect? A. We were not to contact any employees.

Q. If they contacted you, what were your instructions then? A. My instructions, if they contacted me, were that they should go to our personnel office.

Q. Did you follow those instructions? A. Yes, sir.

Q. Do you know an employee at Fleco by the name of James Kitchens? A. Yes, sir.

Q. Did you ever have any conversation with James Kitchens in reference to the Union election? A. No.

Q. What job did Kitchens have, if you recall? A. Yes, he was a burner.

[489] Q. Do you recall any conversation with Kitchens at all, either before or after the election, in reference to any union activities or union sentiments? A. No.

Q. Did you ever make a statement to Kitchens to the effect that, "Jim, we are going to whip them"? A. No, sir.

Q. Do you know an employee by the name of Lephus Felton? A. Yes, sir.

Q. What was Felton's job? A. He was a helper in the painting and shipping department.

Q. After the election in 1966, and up until the time of the strike, did you have any conversation with Felton, that you can recall? A. No, sir.

Q. Now, how about in reference to his work?

Did you have any conversations with him—— A. No, not that I can remember.

Q. Did Felton ever complain to you about anything, then? A. After the election?

Q. Well, at any time.

We will put it like that. A. Yes, sir.

Q. What was his complaint? A. His complaint was about one of our cranes.

[490] Q. Yes? A. He complained about one of our cranes being unsafe, and he had talked to his supervisor, and then he had talked to me, which he was permitted to do.

And, my conversation with him was that our maintenance department would look into this and take care of it.

Q. Who else was present at that time, when you talked to him about the crane, if you recall? A. Norman Wilcox.

Q. Does he work in that area—Norman Wilcox? A. Norman Wilcox works in the same office that I do.

Q. I see.

And, Felton was talking in your office and Wilcox was in that office.

Is that right? A. Yes, sir, that's correct.

Q. Did you ever state to Felton——.

Mr. Mattson: I object.

This sounds like a leading question.

Trial Examiner: The objection is overruled.

Q. (By Mr. Bowden) Did you ever make this statement to him?

Quote—we would never sign a union contract under any circumstances, and even though it is up to Mr. Russell, we know how he feels—end quote.

[491] Did you ever make that statement? A. No, sir.

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NORMAN WILCOX

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

* * * * *

Direct Examination

Q. (By Mr. Bowden) Mr. Wilcox, what is your position with Fleco Corporation? A. Production coordinator.

Q. Do you have an office? A. Yes, sir.

Q. Where is that located? A. It's located in the production department.

Q. Do you share that office with anyone? [492] A. Yes, sir, I share the office with Mr. Morgan, the production manager.

Q. Did you have occasion to be present at any time when Mr. Morgan had a conversation with Lephus Felton?

A. Yes, sir.

Q. Do you recall approximately when that was?

Fixing it as to the election, was it before or after the election, or the strike—generally? A. It was before the election.

Q. Before the election? A. Yes, sir.

Q. All right, sir.

Do you recall what that conversation was? A. Yes, sir, it was—Felton had come to Mr. Morgan, was concerned of the safety of one of the cranes that he was working—him and the other men were using.

Q. All right, sir.

What was the conclusion of that conversation, or what was done? A. The conversation was that Mr. Morgan would get with the maintenance department, and the maintenance department would take care of the crane.

Q. All right.

Did you hear the whole conversation between the two? A. Yes, sir.

[493] Q. Did you hear Mr. Morgan make a statement to Felton that, "We would never sign a contract under any circumstances, and——"

Mr. Mattson: Object.

Your Honor, that is leading.

Q. (By Mr. Bowden) "——even though it is up to Mr. Russell we know how he feels——"

Trial Examiner: Just a moment.

I am overruling the objection, but I am reminding you again, Mr. Bowden, that I would prefer you to ask questions in form, "was there anything said about the Union"—something of that sort, to elicit the witness' memory, rather than to answer a question to which the answer

may be obvious, or where the response desired is quite obvious.

Mr. Bowden: All right, sir.

Trial Examiner: I cannot give much weight to such answers.

Q. (By Mr. Bowden) Well, what is your answer to that, sir? A. Would you repeat the question, please, sir?

Q. Yes.

"We would never sign a contract under any circumstances, and even though it is up to Mr. Russell, we know how he feels."

Did you hear that comment made? A. No, sir.

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[495]

THOMAS PEACOCK

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

• • • • •

Direct Examination

Q. (By Mr. Bowden) Mr. Peacock, what is your position with Florida Machine? A. Vice president, marketing.

Q. What are your responsibilities? Is that sales? A. Sales, yes.

Q. All right.

Do you recall the Union election with the Steelworkers in 1966? A. Yes, sir.

Q. How did the—what preparations did the Company use in their approach to this election?

[496] Did they form a team? A. Yes, sir.

Q. Were you a member of that team? A. Yes, sir.

Q. Now, who else was on this team? A. Tommy Madison.

Q. You and Tommy Madison? A. Right.

Q. And, what was your responsibility? A. To talk with the men.

Q. Now, were you two the only two who were supposed to do this? A. Yes, sir.

Q. To your knowledge, did anyone else talk with the employees? A. No, sir, no one else did.

Q. In these conversations with employees, Mr. Peacock, where did you talk to them? A. I was handling it as a sales deal, selling myself, selling the Company.

Trial Examiner: You spoke to the men individually, in your office?

The Witness: Individually, yes.

Trial Examiner: And, in your office?

The Witness: No, sir, it was an office in the plant.

[497] Trial Examiner: I see.

I see.

The Witness: It was cleaner.

Q. (By Mr. Bowden) Did you have an outline of what you talked to the men about? A. Yes.

I had an agenda that we had—Tommy and I had worked together on it, outlining—oh, four basic heads, thinking about their—the present benefits, going into the hospitalization, vacation plans, then talking about job security and how we were out, from a sales standpoint, getting work, talking about wage rates, comparing charts that we had of surveys we had made around town, talking about the job opportunity, that it was a growing company, that we did have a policy of ability and aptitude, attitude.

But, I had—and then, overriding all of this was the two thoughts that we had talked to you on, and that is under no conditions should we make any promises or any threats.

But, I had a written outline that I used.

Q. All right, sir.

Do you have your outline with you? A. Yes, I brought it with me.

(Handing document.)

Q. Now, do you know whether Mr. Madison had a similar outline or not? [498] A. Yes, sir, because he and I worked together on the outline.

He wrote it down, and then we conferred with you, and we made a Xerox of it, and I used one and he had another one.

Q. Is this in Mr. Madison's handwriting? A. Yes, sir.

Q. Did you follow this outline, then, in each one of your conversations with employees? A. Yes, sir.

Mr. Bowden: At this time, Your Honor, I would like to introduce as Respondent's Exhibit No. 12 this outline that was used by Mr. Madison and Mr. Peacock, in these employee interviews.

(Whereupon, the above-referred to document was marked as Respondent's Exhibit No. 12, for identification.)

Trial Examiner: May I see a copy, Mr. Bowden?

Mr. Bowden: Yes, sir.

Trial Examiner: Are you offering this as Respondent's Exhibit No. 12?

Mr. Bowden: Yes, sir.

Trial Examiner: Is there any objection from the General Counsel?

Mr. Mattson: I object to the relevancy of it.

[499] It is also hearsay, as to the issues involved herein. And, the authenticity is not established.

Trial Examiner: I will overrule the objection, and Respondent's Exhibit No. 12 is received.

(Whereupon, the document previously marked as Respondent's Exhibit No. 12, for identification, was received in evidence.)

Q. (By Mr. Bowden) Mr. Peacock, do you know an employee by the name of Herbert Wright? A. Yes, sir.

Q. Do you recall if you talked to Herbert Wright, in connection with your conversations with the other employees, before the election? A. Yes, sir.

Q. Do you recall what you said to Herbert Wright? A. It would be a conversation of this outline.

Q. Respondent's Exhibit No. 12? A. Yes, sir.

Q. Did you vary from that, insofar as you know? Did you make any other comments? A. Only from a conversational type of thing.

If—like he was working as a chipper up in the front end of the cleaning room, and it—if it was a hot day—I don't recall that it was—but, I used this in talking with [500] the men—as a conversation type thing:

“Hot up there today?” or, there would be other things that we would talk about, yes.

Q. Did you express any opinion to him about what the Company's position might be in the event the Union won the election? A. No, sir.

Q. Was there any such conversation, insofar as you recall, that took place between you and Herbert Wright? A. No, sir, there wasn't.

Q. Do you know an employee by the name of James C. Withers? A. Yes, sir.

Q. Do you recall whether during the strike Withers went out on strike, or not? A. He did go out on strike.

Q. Did you have occasion to see him in the plant after the strike commenced? A. Yes, sir.

Q. Do you recall approximately when that was? A. The exact day, I don't.

It was within a few days of when it started; whether it was one or two, I couldn't be positive. But, it was in the first few days.

Q. All right, sir.

[501] Where did you see him? A. Back in the area where he worked, the carpenter shop area.

Q. Did you have any conversation with him, at that time, sir? A. No, sir, only to the—and, the reason I'm so positive about seeing him, and the conversation, that there wasn't any—there was a little book that he reached up and he got a book—oh, kind of a notebook size, and I said, "What are you getting?"

And, he said, "I'm getting my book," because he was there to pick up tools, he said.

And, I later found out, several days later, that this was a book that had been gotten for him by Fleco, and in it was kept the records of the size boards and dimensions for making skids.

Q. Would Mr. Withers have any use for that outside the plant? A. No.

Q. This pertains solely to Company business? A. This was solely an aid to him in that job.

Q. Has Withers ever returned that specification book? A. No, sir.

Q. Did you talk to an employee by the name of John W. Handley? [502] A. Yes, sir.

Q. Did you follow the same format when you talked to him, as you did the other employees? A. Yes, sir.

Q. Did you ever inquire from any employee interviewed—did you make any inquiry in reference to their union sympathies or desires? A. No, sir, I did not.

Q. Mr. Peacock, by way of some background in this case has the—has a union ever represented the employees at Florida Machine & Foundry? A. Yes, sir.

Q. Do you recall when that was and which union it was? A. It was the International Molders and the International Machinists.

And, I'm almost positive it was 1942, and I am positive of '58.

Q. I see. A. But, during that time, from '42 to '58.

Q. Now, in 1942—from 1942 to 1958, did the Company conduct annual negotiations with these two Unions?

Mr. Mattson: I object.

Your Honor, this is——

Trial Examiner: The objection is sustained.

Q. (By Mr. Bowden) During the period of time that these [503] two Unions represented employees, did you have any strikes? A. No, sir.

Q. Now, you said that they represented until 1958. What happened? A. That is when they went on strike.

Q. I see.

To your knowledge, has this Company ever had a complaint of an unfair labor practice charge filed against it previously? A. We have not.

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[504]

FRANK ALBERT THOMES

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

* * * * *

Direct Examination

Q. (By Mr. Bowden) Mr. Thomes, by whom are you employed? A. Florida Machine & Foundry Company.

Q. And, what is your job out there? A. I'm pattern maker.

Q. Now, are you in the unit represented by the Union? A. No, sir.

Q. Well, the pattern maker is in the unit—you are doing production work out there, aren't you? A. Yes, I'm an hourly worker.

[505] Q. All right, sir.

Do you recall a speech which Mr. Franklin Russell made to the employees prior to the Union election, the Steelworker election in 1966? A. Yes, sir, I do.

Q. Were you present at the time he made this speech, Mr. Thomes? A. I was present, yes, sir.

Q. Now, jumping for a moment to the—to last year, do you recall a strike which occurred out at the plant? A. Yes, sir.

Q. Did you go out on that strike? A. I did, yes, sir.

Q. All right, sir.

Now, when did you go back in to work after you went out on strike? A. About two weeks after they went out on strike.

Q. I see.

Had you been replaced at that time? A. No, sir, I had not.

Q. Did you then get your same job back? A. I just went back to work as I had quit work, right on the same job.

Q. I see.

Now, getting back to Mr. Russell's speech; did you have [506] a conversation with Mr. Peacock that evening, before Mr. Russell's speech? A. Yes, sir.

Q. Was that Mr. Tom Peacock? A. That was Thomas Peacock.

Q. What was this conversation? A. He asked me to take the paper and follow as Mr. Russell read it, and to see that there were no additions to it or that he added anything else to it.

Q. Did you do that? A. I did, yes, sir.

Q. Now, after Mr. Russell completed his speech, how did you identify the paper that you were reading along with him at the time he made the speech? A. I initialed each page and affixed my signature on the last page.

Q. Was that done immediately following the speech? A. Immediately following the speech, yes, sir.

Q. Now, did Mr. Russell follow the speech that you had been handed a copy of in advance? A. Yes, sir, word for word.

Q. There was no deviation? A. There was no deviation.

Q. I am going to hand you Respondent's Exhibit No. 13, for identification, and ask you if you will tell me what that is, [507] please.

(Handing document.)

A. (Examining document.)

Yes, sir, this is the speech that I followed on, and checked to see whether he added to it or left out anything from it.

Q. Do your initials appear on the first sheet? A. My initials are on the first sheet, second sheet and my name is on the last.

(Whereupon, the above referred to document was marked as Respondent's Exhibit No. 13, for identification.)

Mr. Bowden: Your Honor, at this time I would like to offer in evidence Respondent's Exhibit No. 13, a copy of which I will give the General Counsel.

Mr. Mattson: Your Honor, I object as the—as to the authenticity of the document, whether proper foundation has been laid.

I think it is hearsay evidence; it is not the best evidence.

Trial Examiner: The objection is overruled, and Respondent's Exhibit No. 13 is received.

* * * * *

[516]

THOMAS M. MADISON

having been previously called as a witness by and on behalf of the General Counsel and, having been previously duly sworn, was recalled as a witness by and on behalf of the Respondent, and was examined and testified further as follows:

Direct Examination

Q. (By Mr. Bowden) Mr. Madison, I believe you stated in your previous testimony that you were executive vice president of Florida Machine & Foundry, and Fleco, also?

A. I'm executive vice president of Florida Machine & Foundry, but vice president of Fleco.

Q. Now, from your position, can you state whether either Florida Machine & Foundry Company or Fleco

Corporation has ever been involved in an NLRB complaint, charging unfair labor practice, prior to this proceeding? A. No.

[517] Trial Examiner: They have not been so involved?

The Witness: No, sir.

Mr. Bowden: That is right.

Q. (By Mr. Bowden) Now, does either of the companies have any policy which may be described as anti-union?

A. No.

Mr. Mattson: I object.

That is conclusionary—

Trial Examiner: The answer may stand.

Q. (By Mr. Bowden) Now, in connection with the current negotiations, what was the policy of the Company in connection with these negotiations with the Steelworkers? A. To go to the bargaining table and try to reach some agreement.

Mr. Mattson: I object.

These are conclusionary.

Trial Examiner: I understand they are conclusions. I will treat them as such.

Q. (By Mr. Bowden) Now, during the Union campaign in 1966, which has been testified about a number of times—

Mr. Bowden: Your Honor, without going into it, I just want—

Q. (By Mr. Bowden) —you did conduct instructional classes for your supervisors on how to conduct themselves, did you not? [518] A. Yes.

Q. Were you a member of the team which was selected to explain management's position to the employees during this campaign? A. Yes.

Q. And, in that connection, how did you prepare for these talks? A. We—Thomas Peacock and myself—got together and with the approval of our attorney developed a format to follow in these personal interviews.

Q. Did you follow that format? A. Yes.

Q. Is that the same as has been identified as Respondent's Exhibit No. 12?

(Handing document.)

A. (Examining document.) Yes, sir, this is my handwriting.

Q. Did you follow that? A. Yes, sir.

Q. Do you know an employee by the name of John W. Handley? A. Yes.

Q. Do you know an Alex Chance? A. Yes.

Q. James A. Kitchens? A. Yes.

[519] Q. Thomas Lewis? A. Yes.

Q. Eddie Brown? A. Yes.

Q. Alex Brown? A. Yes.

Q. Did you have interviews with them? A. Possibly.

I don't recall the individuals, as such. I know I had interviews with a little more than half of the men.

Q. I see.

During these interviews, did you inquire from any of the people interviewed, as to their Union thinking or leanings? A. No.

Mr. Mattson: I object to the leading question, Your Honor.

Trial Examiner: The objection is overruled.

Q. (By Mr. Bowden) Did you get into that area at all, Mr. Madison? A. No.

Q. Were there any comments made by you during any of these conferences or meetings that you had with em-

ployees, in regard to what the Company position might be in regard to negotiations? A. No.

[520] Q. Do you recall any comment, either by you or by any of the persons you interviewed, in regard to a contract? A. No.

Mr. Mattson: May I have a standing objection, Your Honor?

Trial Examiner: Yes, you have a standing objection.

Q. (By Mr. Bowden) Now, during the General Counsel's case, an employee by the name of Alex Brown, Sr., and —Elton Stewart—testified about some increases that they had gotten, which they had been promised. A. Yes.

Q. Did you hear that testimony? A. Yes, I did.

Q. Have you had occasion to check your payroll records, to see what the story is? A. Yes, I did.

I'd like to set the record clear, if I may.

Q. All right, sir. A. (Examining document.)

When checking out the payroll department, Alexander Brown, Sr., on 2/28/67 was classified as a helper on our eight o'clock shift; his base rate was \$1.74, with an eight cent per hour shift differential—the total per hour rate of—of \$1.82.

On August 29th, 1967, when he was hired—rehired, he [521] was classified as a helper. He was brought in on the eight o'clock shift and his base rate was \$1.74, and due to an error, he was paid a ten cent shift differential, until it was corrected on the second day of October, 1967.

His total rate on 8/29/67 was \$1.84 an hour, and as I said, two cents of that was a mistake, which was corrected on October second, 1967, when his rate was increased to a base of \$1.82, and with the ten cent shift differential, bringing it to a total of \$1.92.

On Elton Stewart, the record shows that on 2/28/67, he was classified as a helper on the eight o'clock shift,

with a base rate of \$1.74, a shift differential of eight cents, bringing a total of \$1.82.

On the 13th of March—let's see—he's a helper on the second shift, with \$1.74 base, and his shift differential then was five cents, bringing his total to \$1.79.

On April the 17th, 1967, he was put on the third shift, his base rate was \$1.74, his shift differential was ten cents, to a total of \$1.84.

On October the second, he was on the same shift, his base was raised to \$1.82, his shift differential was 12 cents, giving him a total of \$1.94.

Q. All right, sir.

Now, Mr. Madison, did you under subpoena request from the General Counsel, prepare a replacement list, which the [522] General Counsel questioned you about on your previous direct examination? A. Yes, I did.

Mr. Bowden: Your Honor, I do not see where that was ever introduced into evidence.

However, he used it for the purpose of examining the witness, and I am assuming that it is in, although I do not have any record of it.

Mr. Mattson: No.

Trial Examiner: You did not introduce it?

Mr. Mattson: I did not introduce the document, no, sir, Your Honor.

Trial Examiner: Well, then, perhaps you would like to introduce it.

Mr. Bowden: Yes.

I would ask that this document be marked for identification as Respondent's Exhibit No. 14.

(Whereupon, the above-referred to document was marked as Respondent's Exhibit No. 14, for identification.)

Q. (By Mr. Bowden) Mr. Madison, I hand you Respondent's Exhibit No. 14, for identification, and ask you, is this the list that you prepared on the request of the General Counsel, by subpoena?

(Handing document.)

[523] A. (Examining document.)

This is a list of what was prepared, yes, sir,

Trial Examiner: What is this list, Mr. Bowden?

The Witness: Well, sir——

Trial Examiner: Or Mr. Madison—either one.

The Witness: —this is List No. 3 on the General Counsel's original subpoena, which lists the name of the striker, the name of the replacement, the job classification involved, the hourly rate of pay and the date of such replacement.

Trial Examiner: Thank you.

Mr. Bowden: Your Honor, at this time I would like to introduce this as Respondent's Exhibit No. 14.

Trial Examiner: Is there any objection from the General Counsel?

Mr. Mattson: May I ask a few questions on voir dire, Your Honor?

Trial Examiner: Yes.

Voir Dire Examination

Q. (By Mr. Mattson) Mr. Madison, did you prepare this, personally? A. No.

Q. Do you know, of your own knowledge, that these individuals were hired on the dates indicated, and put in those specific jobs on those dates indicated? [524] A. Our records show that.

I personally don't know, because I didn't prepare the list myself.

Q. Did you see the records yourself, and compare them with the list, for each individual? A. I did not check—I've seen the records, but I didn't check it personally, no, sir.

Q. Is it possible that some of these employees were not hired in the specific categories indicated there, as far as your knowledge goes? A. I would say no.

Q. You do not know, to your own personal knowledge, do you? A. No; no, I didn't check the list.

Mr. Mattson: I object to this exhibit, Your Honor, on the basis of the foundation laid for introducing this document—it has not been laid, and I strongly question its accuracy.

Mr. Bowden: Your Honor, I would offer the General Counsel the same privilege in this connection as he offered us in the subpoena, and that would be the right to inspect the records, if he so desires, to check the authenticity of this document.

They have the "in lieu of," that this could be produced subject to his right to check our records, which we are willing for him to do.

[525] Mr. Mattson: General Counsel would not assume the burden.

Trial Examiner: What would you consider adequate information?

Mr. Mattson: An individual who can testify as to each individual being hired, the record entry on the dates indicated, the job classifications, that the man was actually hired to replace an individual named on there at that particular date.

Trial Examiner: Well, let's go off the record for just a moment.

(Discussion off the record.)

Trial Examiner: On the record.

You have offered Respondent's Exhibit No. 14, Mr. Bowden, and—

Mr. Bowden: Yes, sir.

Trial Examiner: —there has been an objection by the General Counsel.

The objection is overruled, and Respondent's Exhibit No. 14 is received.

(Whereupon, the document previously marked as Respondent's Exhibit No. 14, for identification, was received in evidence.)

Trial Examiner: Mr. Bowden, you may proceed.

[526] **Further Direct Examination**

Q. (By Mr. Bowden) Mr. Madison, on your direct examination by the General Counsel your attention was called to a couple of names appearing on that list.

Do you recall what those names were? A. Yes, sir.

On Page 3, about halfway down, Willie Boggs and Rufus Smith. Smith followed Boggs.

Q. Since leaving the stand, what have you done in that regard? A. I questioned whether or not the replacement and replacement date was correct.

Q. What did you do? A. I had our complete list audited.

Q. All right, sir.

As a result of that audit, did you find any errors in your original list? A. Yes.

Q. I hand you now Respondent's—

Mr. Bowden: May this document be marked as Respondent's Exhibit No. 14 (a)?

(Whereupon, the above-referred to document was marked as Respondent's Exhibit No. 14 (a), for identification.)

Q. (By Mr. Bowden) I hand you what has been marked as [527] Respondent's Exhibit No. 14 (a), for identification, and ask you what this is.

(Handing document.) A. (Examining document.)

This is a list of corrections to this particular list of replacements.

Q. As I understand it, this information should be substituted for these names on your original list? A. Yes.

Trial Examiner: You are offering Respondent's Exhibit No. 14 (a)?

Mr. Bowden: Yes, sir, as a supplement to Exhibit No. 14.

Trial Examiner: And, I take it that the General Counsel has the same objection to the receipt of Exhibit No. 14 (a), as previously—

Mr. Mattson: I do.

Trial Examiner: The objection is overruled, and No. 14 (a) is received.

(Whereupon, the document previously marked as Respondent's Exhibit No. 14 (a) for identification, was received in evidence.)

Trial Examiner: Mr. Bowden, I think you mentioned—I do not know if it was on the record or off the record—that the General Counsel may, if he wishes, inspect the Company's [528] records on Exhibits Nos. 14 and 14 (a)?

Mr. Bowden: That is correct, sir.

This is the information he asked for in his subpoena, and he reserved that right in his subpoena.

Trial Examiner: I will, of course, advise the parties at this point, if the General Counsel should consider it

necessary to check No. 14 and No. 14 (a), and on the basis of that check, believes that there is further relevant information that goes materially to the question of replacement, I will invite him now to ask to reopen the record for the introduction of such evidence.

Mr. Bowden: May I have a minute here?

I have to clear up something in my own mind.

Trial Examiner: All right.

Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Bowden: Your Honor, in light of—in connection with the General Counsel's subpoena, again, this is Subpoena B-58948, and this is Item 6, General Counsel introduced into evidence as General Counsel's Exhibit No. 5, a list of employees who were sent termination notices on March 16.

I would like to at this time move that we also include the date of March 17, since an investigation reveals—we found that at least two of them were sent actually on March [529] 17.

That would then make the list correct. He has the letters and the signed receipts.

Trial Examiner: Well, would you propose an amendment, then, and perhaps a stipulation—a stipulation, rather, and then——

Mr. Bowden: Yes, sir.

Just to change this to the 16th and 17th, is all we would have to do to make it technically correct.

Mr. Mattson: I have no objection.

Trial Examiner: All right.

General Counsel's Exhibit No. 5, its heading is revised to show that letters were sent March 16 and 17, 1967.

Q. (By Mr. Bowden) Mr. Madison, we have introduced into evidence as Respondent's Exhibits Nos. 1 through 11 the minutes of the negotiating meetings which we had, which were conducted with the Steelworkers Union.

Do these notes represent your best recollection of those sessions that you attended? A. Yes.

Mr. Bowden: I have no further questions, Your Honor.

Cross-Examination

Q. (By Mr. Mattson) Mr. Madison, you heard Mr. Pear-sall's comment—I believe it was off the record—discussing Respondent's Exhibit No. 14, about replacements, and a number of [530] classifications had not been filled, as a matter of fact. A. Yes.

Q. Is that correct? A. Yes.

Q. Does this mean they had never been filled during the course of the entire strike, or what?

During the entire course of the strike, they had not been filled? You were not able to get replacements? A. No, no.

No, I think at the time——

Trial Examiner: You did not send letters to all strikers?

The Witness: That's right.

Trial Examiner: In other words, these letters were not sent to strikers who had not been replaced on the 15th?

The Witness: The 16th or 17th, yes.

Trial Examiner: In other words, letters were sent out to how many people?

The Witness: Gosh, the list would determine that.

Trial Examiner: I take it there were—there were how many strikers on March 15?

Mr. Mattson: On the list the Employer submitted, I believe there were about 166.

Trial Examiner: And, letters were sent to how many of [531] those?

Mr. Mattson: About 160, I think.

The Witness: I don't know.
I didn't count them.

Mr. Bowden: It would be—the list would——

The Witness: It would be in the record——

Trial Examiner: In any event, they are in the record, but the point is that there were at least some positions that had not—where there had been no replacements, at least, those strikers were not sent letters?

The Witness: Yes, sir; yes, sir, by the 17th, on there, yes, sir.

Trial Examiner: All right.

Q. (By Mr. Mattson) But, it is true, Mr. Madison, is it not, that during the entire course of the strike you were constantly having a turnover of personnel, hiring new personnel? A. A little bit more than before the strike, yes.

Q. And, in many instances, some of the employees hired only stayed one day, or more in some cases? A. In some cases, yes.

Q. Other cases not more than a week? A. In some cases.

Q. Now, when these people were hired, they were hired from a general labor pool, employment office, or what kind of places [532] did you utilize? A. We ran ads in the paper and we had people come by and seek employment with us, through our personnel office.

Q. Now, many of these people had no specific skills—that you were hiring.

Is that correct? A. Not necessarily.

Q. And, they were being brought in to—what, trying to fit them in wherever they could be—— A. Where they qualified, yes.

Q. In many cases, you just tried them out to see if they could do some work?

Would that be it—to see if they could do some of the work—— A. Our hiring policy did not change because of the strike.

Is that what you mean?

Q. No, I am saying that people who came in, whom you were talking about, you hired during the strike—— A. Yes.

Q. ——where they had no particular experience or skills, that many of these people were hired just to see if you could fit them in to some of these classifications? A. Not necessarily, no.

I mean, if it would clear it up, a welder is a welder, and——

[533] Trial Examiner: Mr. Madison, how many of the greater number of production jobs—how many of these jobs—how long does it take to train a man in these jobs?

The Witness: Well, the bulk of them?

Trial Examiner: Yes.

The Witness: Two to three weeks, I'd say, other than a specific job classification, such as welders, machinists, pattern makers.

Trial Examiner: Other than—apart from the more skilled type of man, most of your production workers take two to three weeks to train?

The Witness: I would say the majority of them, yes, sir. Or, in the helper classification.

Q. (By Mr. Mattson) Would you say that any number of these people either quit or were terminated before they completed such training? A. Some of them did, yes.

Q. And, that would include any number of these people who are listed on Respondent's Exhibit No. 14, would it not, Mr. Madison? A. What was that?

Q. That would include some of these names, these people—some of those who are named on Respondent's Exhibit No. 14—would they not be—who quit? [534] A. Are they working there now?

Is that what you're saying?

Q. Yes. A. That's right.

Q. They are not working there now—many of these? A. Some of them, not many of them—some of them.

I haven't audited to see how many have gone.

Q. In other words, you cannot say actually yourself how long any of these individuals stayed on the job, whether it was one day, five days, ten days, or a month?

A. No, sir.

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

333

Nos. 22,872 and 23,010

UNITED STEELWORKERS OF AMERICA, AFL-CIO

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent

and

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

FLORIDA MACHINE & FOUNDRY COMPANY
and FLECO CORPORATION,

Respondent.

On Petition for Review and Application for Enforcement on
Remand of an Order of the National Labor Relations Board

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PRELIMINARY STATEMENT

On March 13, 1961, the National Labor Relations Board ("Board") issued its Decision and Order (A. 56-61, 22-56), ^{1/} reported at 174 NLRB No. 170, against Florida Machine & Foundry Company and Fleco

^{1/} "A" References are to portions of the record printed as the Appendix of the parties in the original proceedings before this Court (Cases No. 22,872 and 23,010). "Supp. App." references are to the Board's Supplemental Decision and Order, and to portions of the transcript inadvertently omitted from the Appendix, printed at the end of the National Labor Relations Board's brief filed in July, 1971.

Corporation (hereinafter referred to as "the Company"). The Union ^{2/} petitioned this Court for review of the Board's Order, and the Board applied for enforcement thereof against the Company. The two cases were consolidated by this Court on May 20, 1969.

Subsequent to the filing of briefs and oral argument, this Court remanded the case to the Board on December 4, 1970, for reconsideration of certain findings. App. D.C., 441 F.2d 1005. Upon remand, in accordance with the Court's instructions, the Board reconsidered its findings and on May 28, 1971, issued a Supplemental Decision and Order in which it "reaffirm[ed] the findings, conclusions, and remedy provided in our original Decision and Order" (Supp. App. A-3, infra). The Board's Supplemental Decision and Order are reported at 190 NLRB No. 109.

The instant proceeding is before the Court upon the Board's application for enforcement upon remand of its original Decision and Order. This Court has jurisdiction of the proceeding under Section 10(e) and (f) of the Act.

This Court, in its decision of December 4, 1970 remanding the case to the National Labor Relations Board for reconsideration, did not comment upon the issue presented by the Union's Petition for Review in No. 22,872 - to wit: Whether the Board erred in concluding that an employer who notifies unfair labor practice strikers that they are "terminated" does not incur liability for back pay from the date of such notification but only from such later date as the employee applies for reinstatement. Rather, the Court determined to wait until after the Board's reconsideration before addressing the

^{2/} United Steelworkers of America, AFL-CIO.

merits of the Union's Petition for Review. Accordingly, we will limit ourselves in this brief to answering the arguments advanced by the Board on this issue in its current brief (filed in July 1971). We shall not restate the facts or the substance of our argument as it appears in our opening brief previously filed with the Court.

ARGUMENT

The Board, on pages 39-42 of its most recent brief, addresses itself to the issue raised by the Union. In short, the Board argues that unfair labor practice strikers, who are thereafter discharged by their Employer in violation of Section 8(a)(3) of the Act during the course of the strike, are not entitled to backpay from the date of the unlawful discharges, but rather only from the date upon which they abandoned the strike and specifically requested reinstatement from the Employer.

It is true, of course, that the Board has been invested with wide latitude in fashioning remedial orders. But the exercise of this broad discretion is not without legal limitations. At the very least, any such remedial order must satisfy the fundamental criterion of effectuating the purposes and policies of the Act. See, for example Phelps Dodge Corp. v. NLRB, 313 U.S. 177 (1941).

This, we submit, the Board's instant order fails to do. For it does not provide backpay to employees unlawfully discharged after they initiated a strike in protest of their employer's unfair labor practices.

As such, the Board's order relegates these employees (who were engaged in an unfair labor practice strike) to a status inferior to that of other victims of illegal discharge whose entitlement to backpay commences on the first day of discharge without regard to when they apply for reinstatement. This result is especially incongruous since unfair labor practice strikers enjoy a uniquely protected status under the law -- notwithstanding the fact that they are withholding their services from the struck employer they not only remain "employees" under the Act but also their return to work cannot be barred by their employer's decision to hire replacements (permanent or otherwise). Mastro Plastics Corp. v. NLRB., 350 U.S. 270, 278. (1956)

Here, the Board specifically found that the employer unlawfully discharged approximately 160 of the unfair labor practice strikers when it sent them termination letters on March 16 and 17, 1967. The Board further found that the strike was an unfair labor practice strike precipitated by the Employer's egregious conduct in violation of Section 8(a)(5) of the Act.

This means that if the Board's backpay order is not modified in the manner sought by the Union, i.e., backpay beginning with the date of the unlawful discharges, this massive 8(a)(3) violation by the employer will go totally unremedied. In essence, what the Board appears to be holding is that insofar as backpay is concerned an illegally discharged unfair labor practice striker stands on no better footing than any striker who was not the victim of an unlawful discharge.

The Board's attempt to justify this strained result rests on equally strained reasoning. According to the Board, no backpay is

due because following the illegal discharges the striking employees "presumably failed to [apply for reinstatement]...because of their continued support of the strike" (brief p. 41). Thus, in one fell swoop the Board has turned the legal presumption doctrine on its ear. It was the employer's unlawful conduct which precipitated the strike, and, once again, it was the employer who engaged in unlawful conduct by discharging the employees during the course of the strike. In these circumstances, we submit, the presumption (if any be applicable) must favor the innocent victims - the employees - not the guilty wrongdoer. Franks Bros. v. NLRB., 321 U.S. 702, 704 (1944). Indeed, there are persuasive reasons for making such a presumption to protect employees. For unlawful discharges during the course of an unfair labor practice strike have the natural effect of prolonging the strike; the discharges bring it close to home to the employees that the Employer is bent on violating the law at every turn in order to frustrate their statutorily-protected rights to self-organization and collective bargaining.

Finally, the fallacy of the Board's reliance on the instant presumption is highlighted by the conflict created with other cases. The Board follows a well-established policy of awarding backpay from the date of discharge to an employee unlawfully terminated prior to an unfair labor practice strike even though the employee thereafter actively participates in that strike during its entire duration. See, e.g., Monohan Ford Corp., 157 NLRB 1034 (1966), where the Board stated:

"We find merit in the General Counsels' exceptions to the Trial Examiner's finding that Frank Gorman should not receive backpay for the strike period. Gorman was discriminatorily laid off by Respondent on July 22, 1964, and thereafter joined the strike which began later in the same day. In accordance with established Board policy in cases of discriminatory termination before the employee goes on strike, we find that Gorman is entitled to backpay for the entire period from his layoff on July 22, 1964, to the time of his reinstatement on August 3, 1964. We shall modify the remedial order to accord with this finding." (Footnotes omitted).

See also, Rogers Mfg. Co., 164 NLRB 284 (1967); Standard Printing Company of Canton, 151 NLRB 963, 966 (1965).

There is no meaningful distinction to be drawn between these cases and the instant (and like) cases. If the employees in the instant case are not entitled to backpay because it can be presumed that they would have remained on strike during the post-discharge period despite their unlawful discharges, how can it be presumed otherwise in the case of an employee who is illegally terminated and joins a strike thereafter, (as in Monohan Ford)? Yet, in the latter case the employee is awarded backpay from the date of discharge, including the period during which he was actively on strike, and presumably unavailable for work because of his strike action.

Next, the Board's analysis suffers from the obvious defect that it would require employees already discharged unlawfully to engage in a futile act - applying for reinstatement - as a precondition to being entitled to backpay. The instant facts dramatically illustrate this very point.

Even prior to discharging the striking employees, the employer made known its position. On March 13 and 15, 1967, several strikers in fact sought reinstatement to their former positions, as they were entitled to by law. Yet, the employer denied these requests (Board's

brief at pp 12-13). The employer pursued a consistent course of conduct even after the strike ended. Thus, in July 1967, the former strikers expressly requested reinstatement to the positions they occupied when the strike began; once again, however, those requests were denied.

As a general proposition, the law does not require parties to engage in futile acts. See, for example, Glover v. St. Louis - San Francisco Rail Road Company, 393 U.S. 324, 331 (1969). More specifically, as the Board and Courts have recognized, when the act of requesting reinstatement would be futile such a request is not a necessary prerequisite to entitlement to backpay following an unfair labor practice strike. NLRB v. Comfort, Inc., 365 F2d 867, 878 (8th Cir., 1966); NLRB v. Valley Die Cast Corp., 303 F2d 64, 66 (6th Cir., 1962). Surely there could be no more clear instance establishing the futility of strikers applying for reinstatement than where, as here, the employer had already discharged the striking employees illegally.

CONCLUSION

For the foregoing reasons as well as those set forth in our prior brief, the Board's order should be set aside and the case remanded with instructions to reconsider in light of the Court's analysis showing that unfair labor practice strikers who were illegally discharged are entitled to backpay from the date of discharge.

Respectfully submitted,

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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U.S. COURT OF APPEALS
DISTRICT OF COLUMBIA

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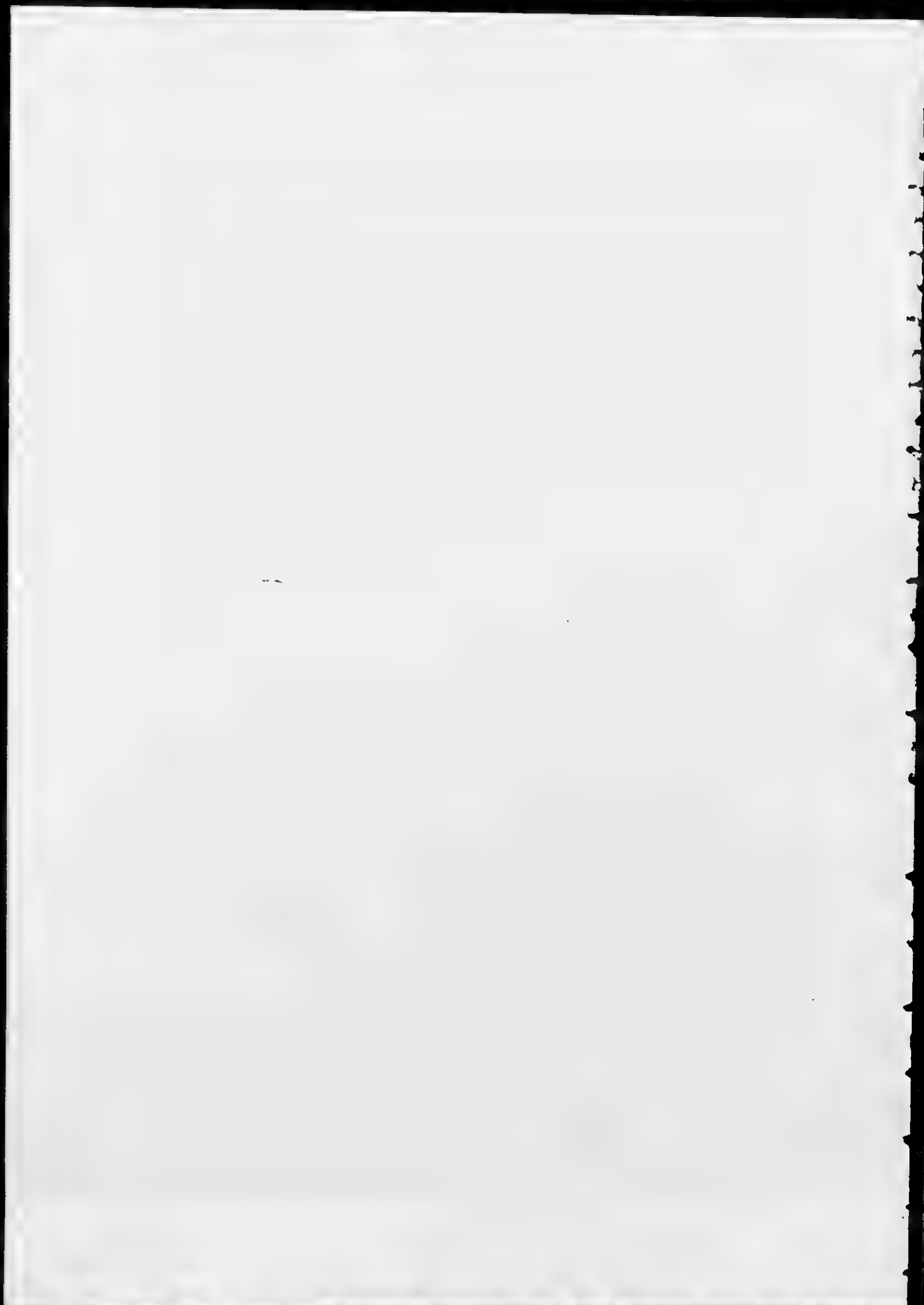
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United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 22,872 and 23,010

UNITED STEELWORKERS OF AMERICA, AFL-CIO,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

and

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

and

FLORIDA MACHINE & FOUNDRY COMPANY
AND FLECO CORPORATION,
Respondent.

On Petition for Review and Application for Enforcement on Remand
of an Order of The National Labor Relations Board

**BRIEF FOR
THE NATIONAL LABOR RELATIONS BOARD**

STATEMENT OF QUESTIONS PRESENTED

Case No. 23,010

1. Whether substantial evidence on the whole record supports the Board's finding that the Company violated Section 8(a)(5) and (1) of the

Act by failing to bargain in good faith with the Union on and after November 28, 1966.

2. Whether substantial evidence on the whole record supports the Board's finding that the Company violated Section 8(a)(5) and (1) of the Act by refusing to supply the Union with the names, job classifications, and wage rates of bargaining unit employees; and by refusing to comply with the Union's request for area wage survey information within a reasonable time.

3. Whether substantial evidence on the whole record supports the Board's finding that the Company violated Section 8(a)(5) and (1) of the Act by unilaterally increasing wages on October 2, 1967, and further violated Section 8(a)(1) by promising wage increases to employees in return for their nonsupport of the strike.

4. Whether substantial evidence on the whole record supports the Board's finding that the Company violated Section 8(a)(3) and (1) of the Act by discharging and refusing to reinstate unfair labor practice strikers.

Case No. 22,872

5. Whether the Board's order is proper.

In accordance with Rule 8(d) of the General Rules of this Court the Board states that these consolidated cases were previously before the Court (Chief Judge Bazelon, Circuit Judges Tamm and District Judge Matthews) under the same caption and docket numbers.

REFERENCE TO RULINGS

On March 13, 1961, the National Labor Relations Board issued its Decision and Order (A. 56-61, 22-56),¹ reported at 174 NLRB No. 170, against Florida Machine & Foundry Company and Fleco Corporation (hereinafter referred to as "the Company"). The Union² petitioned this Court for review of the Board's Order, and the Board applied for enforcement thereof against the Company. The two cases were consolidated by this Court on May 20, 1969.

Subsequent to the filing of briefs and oral argument, this Court remanded the case to the Board on December 4, 1970, for reconsideration of certain findings. __ App. D.C. __, 441 F.2d 1005. Upon remand, in accordance with the Court's instructions, the Board reconsidered its findings and on May 28, 1971, issued a Supplemental Decision and Order in which it "reaffirm[ed] the findings, conclusions, and remedy provided in our original Decision and Order" (Supp. App. A-3, *infra*). The Board's Supplemental Decision and Order are reported at 190 NLRB No. 109.

The instant proceeding is before the Court upon the Board's application for enforcement upon remand of its original Decision and Order. This Court has jurisdiction of the proceeding under Section 10(e) and (f) of the Act.

¹ "A" references are to portions of the record printed as the Appendix of the parties in the original proceedings before this Court (Cases No. 22,872 and 23,010). "Supp. App." references are to the Board's Supplemental Decision and Order, and to portions of the transcript inadvertently omitted from the Appendix, printed at the end of this brief.

² United Steelworkers of America, AFL-CIO.

STATEMENT OF THE CASE

I. THE BOARD'S FINDINGS OF FACT

Briefly, the Board found that the Company violated Section 8(a)(5) and (1) of the Act by its failure to bargain in good faith with the certified bargaining representative of its employees, by unilaterally increasing wage rates, by refusing to supply the Union within a reasonable time with copies of area wage survey data, and by its failure to supply the Union with information concerning the identity, wage rates, and job classification of its employees. The Board also found that the Company violated Section 8(a)(3) and (1) of the Act by discharging and refusing to reinstate unfair labor practice strikers upon their unconditional offer to return to work. Finally, the Board found that the Company promised wage increases to nonstrikers in return for their nonsupport of the strike, in violation of Section 8(a)(1) of the Act. The facts upon which the Board relied in making these findings are summarized below.

A. The Company's pre-election conduct

The Company manufactures machinery parts at its plant in Jacksonville, Florida (A. 3, 7). In the summer of 1966, following an organizing campaign, the Union filed an election petition with the Board seeking to represent the Company's production and maintenance employees, and the Board's Regional Director scheduled an election for September 22 and 23 (A. 23).

Meanwhile, on August 3, 1966, the Company notified its employees that a revised insurance plan expanding hospital, medical and surgical benefits, and increasing life insurance to \$5,000, was scheduled to go into effect on August 1 but had been put "on the shelf" because the Union

had claimed representative status on August 2 (A. 33; 377-73). Approximately one month before the election, Plant Superintendent George Peacock told the "whole night shift" that he had heard "the boys was trying to get a union in there" but that it was not a "union job," and a union would never be brought in "as long as he had something to do with the plant." (A. 26; 235).

About two or three weeks before the election, the Company's vice presidents, Thomas Madison and Thomas Peacock, interviewed prospective voters (A. 24; 519). For example, Madison called employee Alex Chance into the production office and asked him if he knew anything about "the fellows . . . trying to get a Union in there." Chance answered in the negative, and Madison told him to report back "anybody trying to get a Union in here." (A. 24; 234). Chance agreed to do so, and Madison reminded him that the Company had had a bad strike in 1958. Madison remarked that Chance had a large family, and could not afford to lose his job. During the interview, Chance's personnel file was in front of Madison. (A. 24; 234).

James Kitchens and Thomas Lewis were called into the foundry office and asked by Madison how they felt about the Union (A. 24; 240, 246-247). They also were reminded about the 1958 strike. Madison told employee Eddie Brown that men had lost their jobs and homes during the 1958 strike, that if the Union came in now, it would cause strikes, and that he and the Company President did not want a Union (A. 24; 258-259).

Madison reminded employee Alexander Brown that Brown had five children, that he had worked 4½ years for the Company, that the Union was trying to get in, and that the Company did not want the Union. Madison asked Brown what he thought about the Union, and if he had heard "anybody say anything about it." Brown replied that he was not for the Union, nor had he heard anyone talk about it (A. 24; 266).

Madison interviewed employee Joe Singleton in the old personnel office. Madison noted that Singleton had been with the Company "quite a while", and that he had given the Company "no trouble." Madison asked Singleton if he had been to the Union meetings and if he was a member of the Union. When Madison asked if Singleton remembered the 1958 strike, Singleton replied, "of course", whereupon Madison reminded him that a lot of men had had good jobs, but they had struck and lost their homes, their automobiles and other things. He added that "one thing was sure," if the Union came in, "we'll never sign a contract." (A. 24; 272)

Vice President Thomas Peacock held similar interviews. He told employee John Handley that he wanted to talk to him about the Union, and that he understood that Handley wanted a better job, adding that he would get this "after everything was over." He reminded Handley that Handley was "not getting any younger," that "according to the record" he had a big family, and that it was hard to get a job at his age. (A. 25; 228-229). Peacock spoke to employee Herbert Wright in the warehouse office. He showed Wright his personnel file and said Wright was "a good worker" who "didn't get into any trouble." When Peacock asked Wright what he thought about the Union, Wright said he thought it was "a good idea" because it would improve "working conditions and seniority and so forth." Peacock thereupon informed Wright that if the Union won, it would not get a contract because "it was a non-union job." He added that the men were making "good money," and then told Wright to get up and leave the office (A. 25; 290-291).

During this same period, at the beginning of September 1966, Foundry Foreman Frazier Rhoden came to the home of employee Harold Mays. It was an unprecedented call, during which Rhoden said he understood that Mays was "one of the Union pushers." In a discussion about the

Union, Rhoden declared that "the Company would never sign a contract with any union." (A. 26; 223, 505-507).³

Company officials also spoke to groups of employees about the coming election. President Franklin Russell "made a speech out in the front to everybody" in which he said that the Company did not want a union, that "it could be like it was in '58," and that employees who went "out" would lose their jobs (A. 25; 248). When Russell spoke to the day shift two or three weeks before the election, he talked about the 1958 strike, and urged the employees to vote against the Union, concluding his remarks by stating he was going to say "something that's not lawful for me to say. We won't have a union." (A. 25; 252, 253).

B. Bargaining sessions before the strike

The Board conducted a secret ballot election at the plant on September 22 and 23. There were approximately 300 employees in the unit (A. 35; 455). The Union won the election and was certified on October 3 as the collective bargaining representative of the Company's production and maintenance employees (A. 26).

The Union submitted a written contract proposal to the Company on October 10 (A. 26-27; 402-403, 77). The first bargaining session occurred on November 28 (A. 382).⁴ The parties reviewed the Union's proposed

³ Foreman Luke Morgan made a similar remark to employee Lephus Felton, pointing out that he knew how the Company President felt about unions, and that the Company would never sign a contract with the Union (A. 26; 282).

⁴ A meeting had been scheduled for October 27, but no bargaining occurred on that day since only a single employee-member of the Union's negotiating team appeared. The Company negotiators were present (27; 381-382).

contract, and agreed on several matters.⁵ Company attorney Otto Bowden said he would prepare a counterproposal for submission to the Union (A. 27; 423). Union representative Edwards urged the Company "to meet as soon as possible, preferably in a succession of days, so the negotiations would have some consistency and flow." Bowden refused, saying he had a busy schedule and could not meet again until December 19 (A. 27; 423). Although Edwards objected that this was "too much time," Bowden insisted that he had other commitments and the parties did not meet again until December 19 (A. 27; 423, 382).

At the December 19 meeting, the Company submitted a complete contract proposal which omitted or modified several of the terms agreed upon by the parties at the first meeting (A. 27; 404, 426-427, 98-116). Thus, previously agreed-upon provisions concerning holiday and vacation pay, leaves of absence, Union use of bulletin boards and submission of discharges to the contract grievance procedure, were either omitted from The Company proposal or were substantially altered (A. 27; 428-430). The Company proposal provided in substance that most decisions affecting working conditions would be reserved exclusively to the Company and would not be subject to the grievance procedure; that disputes which were subject to the grievance procedure could not be submitted to arbitration unless the "other party agrees to arbitrate the said grievance;" and that strikes (and lockouts) were prohibited for the duration of the agreement, except that a strike or lockout over a grievance was permissible if the

⁵ The parties agreed on recognition and union responsibility clauses, a 60-day probationary period for new employees, management control of hours of work, pay for a holiday occurring during an employee's vacation, no cumulative vacations, regular pay plus vacation pay if an employee elected to work during his scheduled vacation if requested to do so by the Company, leave of absence without loss of seniority for death in the family and serious illness, Union use of plant bulletin boards, and submission of discharges to the contract grievance procedure (A. 27; 420-422, 77-92).

grievance in question had been processed through the grievance procedure and a request to arbitrate had been denied by the other party (A. 27-32, 41-43; 98-99, 102-105, 106-107).

The Company proposal also made its work rules part of the contract, and retained its existing practices as to overtime work, vacations and holidays (A. 33; 99, 431, 436, 497, 108-109). The proposal incorporated the Company's current insurance benefits without the expanded coverage which the Company claimed to have "put on the shelf" in the pre-election period (A. 33; 105, 457, 451, 385-387). A "zipper" clause provided that each party "... unqualifiedly waives the right to request or require further collective bargaining with respect to any matter or subject not specifically referred to or covered by this Agreement, whether or not such matters have been discussed, even though such subjects or matters may not have been within the knowledge or contemplation of either or both parties at the time that they negotiated or signed this Agreement." (A. 32-33; 107-108).⁶

The proposal recited that job classifications and wage rates were "to be negotiated" (A. 33; 110). The Company representatives promptly advised the Union, however, that it would make no wage offer because a wage survey showed that its wages were equal to, or better than, those paid by other companies in the Jacksonville area (A. 34; 437-438). The Union rejected the Company's proposed management rights, Company rules, arbitration, no-strike and "zipper" clauses, and no agreement was reached

⁶ The Union accepted certain of the Company's proposals with some modifications. These proposals included a recognition clause, union visitation of the plant, absenteeism, bulletin boards, production work by supervisors, some leave of absence provisions, a military clause, washing facilities and safety equipment (A. 32-33; 429-432, 435, 437-439). Union representative McCall said the Union would agree to the Company's proposals on union membership and activity "as long as [the Union] had the checkoff provision in the agreement." Bowden said the checkoff "would not bar us from getting a contract." (A. 33; 431, 445).

on other issues which included seniority, grievance procedures, and economic items such as call-in pay, overtime pay, holidays and vacations (A. 34; 430-439).

At the conclusion of the meeting, Union representative McCall asked Bowden, "When can we get back together again?" Bowden replied, "I can't tell you now. I have to go back to the office and look at my calendar". McCall then advised Bowden that he was staying "there [in Jacksonville] at the Holiday Inn." He gave Bowden his room number and said, "Give me a call when you check your calendar". (A. 34; 439-440). McCall waited at the motel for several hours but had no return call. McCall telephoned Bowden's home and was told that Bowden was "at a meeting." McCall said, "well, you tell him again that I called, and [that] I wish he would return my call about a meeting". Bowden did not return the call. The following morning, McCall phoned Bowden's office and talked to a secretary who said she would relay the message. When Bowden did not call, McCall checked out of the motel that morning and returned to Orlando, where he had his secretary call Bowden's office again. (A. 34; 440). Bowden still did not return the call (A. 440).

Some days later, McCall reached Bowden at his home. Bowden said he did not want to negotiate over the holidays. McCall suggested right after the holidays and a meeting was finally scheduled for January 6. (A. 34; 440-441).

The parties did not significantly change their bargaining positions at the January 6, 1967, meeting (A. 34; 446-450). At the end of the meeting, attorney Bowden said that the Company wanted its insurance representative, Horovitz, at the next meeting, and that he would have to work out a meeting date with Horovitz (A. 34, 474-475, 448). Union

representative Edwards urged the Company to meet more frequently, indicating that there was no need to wait for Horovitz "as he was just going to be talking about one item, anyhow." The Company, however, insisted that no meeting be scheduled until Horovitz could attend (A. 34; 474-475, 448).

The next meeting was held on January 25, 1967 (A. 35; 383). Horovitz explained the Company's insurance and pension plan and left the meeting (A. 35; 469-470). The Company offered to increase the daily hospital room rate from \$9 to \$15 a day and, based on a new survey, it also offered to increase the wages of four skilled classifications (A. 35; 454-457).⁷ The Company accepted some modified grievance-procedure language drafted by the Union. The Union proposal left open the question of arbitration, the Company continuing to object to any compulsory arbitration (A. 35; 458-459, 124-126). The parties' positions otherwise remained essentially unchanged (A. 35).

Meetings were held in the presence of a Federal Mediator on February 7, 13 and 22 (A. 35; 383). At the February 7 meeting, the Union offered, *inter alia*, to consider the Company's no-strike clause if it were modified to state that the Union would not "authorize" as opposed to "permit" a strike. The Union also offered to accept the Company's management rights clause, and to drop its demand for call-in pay, if the Company would increase wages 22 cents across the board, add a holiday, and increase hospital benefits to \$20 per day, room and board (A. 35; 480-481). The Company refused to modify its no-strike clause and turned down the Union's proposals on wages, holidays, and insurance benefits (A. 35; 484-486). It offered, however, to increase shift differentials by 2

⁷ This increase, however, applied only to about 30 of the 300 unit employees (A. 35; 456).

cents and to give a wage increase of 8 cents across the board (A. 35; 483, 486). The positions of the parties did not change materially at the meetings on February 13 and 22 (A. 35; 487-492). At a Union meeting on February 26, the members rejected the Company's contract offer, and authorized a strike (A. 35-36; 492-493, 127).

C. The strike

The strike began at 9:30 p.m. on February 28, 1967 (A. 36; 127, 256, 260). That night, Plant Superintendent George Peacock told employees Alexander Brown and Elton Stewart "behind the furnace" that he appreciated their "staying in here and helping me out" and that he was going to give them "a dime raise" (A. 36; 263). Peacock also told four or five employees in the shipping area, including Elijah Fishburne, Johnnie Hall, and Clifford Hall, that the men who remained in the plant that night would receive a 10-cent an hour raise (A. 36; 371-372). The next morning, striker James Withers, a carpenter, was allowed to come into the plant to get some tools "to do some church work". As Withers unlocked his box, Vice President Thomas Peacock suggested that he "take it all" because he would not work there again (A. 36; 251, 256). On Friday, March 3, Plant Superintendent George Peacock told Alex Chance and one or two other employees who had come to the plant for their paychecks that they were replaced and terminated⁸ (A. 36; 236-237).

When striker Johnnie Snead, a crane operator, reported to the plant on Monday morning, March 13, and told Superintendent Peacock he wanted to go back to work, Peacock went to the main office and, on his return, told Snead he had been replaced, but that he could "put in an application and start over as a new man." Snead said, "I'll be damned, after 12 years?", and Peacock said, "That's the way it goes." Snead said he would

⁸ Chance was not in fact replaced until March 13, according to a list compiled from the Company's personnel records (A. 36; 217).

not accept a job "as a new man" and asked about his checks. Peacock left to get Snead three checks due him (A. 36; 314-316).

Similarly, on March 15, when strikers J. E. Sarrells, Melvin Ponce, Raymond Miller, and Ralph Hodges told Foreman Luke Morgan they wanted to return to work, Morgan said they had been replaced and "would have to come back as new employees." As the men started back out, Personnel Manager Cline told Sarrells that they "could go back to work if [they] filled out the applications". Sarrells returned to the plant six weeks later and was hired as a set-up man at his old rate of pay but with loss of seniority and other privileges (A. 37; 326-328, 334-335, 340-341).

D. The Company sends termination letters to virtually all striking employees; the strike ends and the Union applies for reinstatement on behalf of the strikers

After the strike began, the Company was short of men in most of its job classifications. As a result, supervisory and office personnel performed some of the production work "as an emergency measure" (A. 38; 355). During March and April "new groups" of employees were brought to the plant by a motor vehicle with "quite a few seats in it — not a big bus." Many of those employees had no prior training in the type of work performed at the plant; they were hired on a 3-day probationary period; 10 to 15 percent of the new employees turned out to be "unsatisfactory"; and another 10 to 15 percent failed to show up after the first day or two of work (A. 38-39; 365-367).

On March 16 and 17, the Company sent letters to about 160 strikers advising them that they had been permanently replaced and were terminated (A. 37; 376-377, 72). The Company thereafter employed strikers only upon personal application at its personnel office and as new employees.

Thus, when employees returned to the Company and asked for their jobs, they were advised by the Company to submit applications, and were told that when an opening occurred, they would be called back as new employees (A. 37; 242-243, 248-249, 299).

When welder Carl Hillyard asked about his job 3 or 4 weeks after the strike began, he was told by Production Coordinator Norman Wilcox, speaking for Foreman Luke Morgan, that Morgan had no job open for him (A. 37-38; 297-298, 516). Hillyard "a little bit" later asked another applicant for employment whether he had been hired by Morgan. This applicant, who was on his way to the personnel office, said he had been hired by Morgan. Hillyard asked him "what he was applying for" and was told "welder" (*ibid.*).

Similarly machinist George Loznicka asked Plant Superintendent George Peacock for work on May 30, saying that he "heard that if you wanted to go back you'd have to go back as a new man". Peacock said they had "plenty of work" and a place for Loznicka and that his rate of pay would be the same as it was before the strike. He instructed Foreman Grady Ivey to take Loznicka to the personnel office when he came in the next morning to "fill out an application and be photographed." Loznicka later that day decided he did not want to return as a new employee (A. 38; 294-296).

The strike ended on July 9, 1967. That day, the Union advised the Company by telegram that it had directed "all striking members . . . to return to work as soon as possible beginning" Monday morning, July 10, that some who were out of town would "report in the near future;" and that the telegram was "the Union's official notice that all strikers hereby request to return to work." The telegram stated that the return to work was not conditioned upon any union demand "save that such employees

be put to work on the same job each previously held or on a similar job of equivalent pay" (A. 38; 65-66). The Company thereafter accepted applications from strikers and recalled many of them to work as new employees. (A. 38; 242, 248-249, 255, 260, 299).

E. Bargaining meetings during and after the strike

The Company and the Union met in the presence of the Federal Mediator on March 14, May 1 and August 7, 1967 (A. 39; 493, 495, 383). At the March 14th meeting, two weeks after the beginning of the strike, no concessions were made by either party (A. 39; 493-494). At the May 1st meeting, the Union reduced its wage request from 20 to 18¢ across the board (A. 39; 496). On May 31, the Union wrote to the Company requesting the area survey data upon which the Company had based its offer of wage increases for four job classifications during the negotiations. The Union also requested the Company to supply the "names, job titles and rates of pay for each employee [in] the bargaining unit who is presently employed," so that the Union could assess reports reaching its office to the effect that the Company was paying striker replacements more than the strikers had earned prior to the strike (A. 39; 140).⁹ On June 7, Bowden advised the Union that he had forwarded the letter to the Company and would "be back in touch with you" as soon as he learned the facts concerning wage rates paid to striker replacements (A. 141). No mention was made of the wage survey and other data requested by the Union. Seven weeks later, having heard nothing further from the Union on this subject, the Union reminded Bowden of its May 31 request for information and again requested the Company to "make this data available"

⁹ The Company had supplied similar information on December 19, 1966, with respect to employees then in the bargaining unit. This was, of course, prior to the strike. (A. 427).

(A. 142). Bowden replied, by letter dated July 31, that the Company was not paying premium rates to those currently working. Again the Union's request for specific data was ignored (A. 143-144).

At the August 7 meeting, the Union offered concessions with regard to its "intent and purpose" clause, inclusion of Company rules in the contract, insurance, and physical examinations (A. 39; 497-499). It dropped its request for an additional holiday (A. 39; 497). The Company agreed to change the word "permit" to "authorize" in its no-strike clause (A. 39; 498).

The following day, August 8, Union representative Edwards notified Bowden by letter that the Union would accept a 15¢-an-hour general wage increase (A. 39; 145). Edwards once again asked Bowden for the names, jobs and rates of pay of the employees in the unit, and the area survey information (*ibid.*). Thereafter, on August 15, Bowden advised Edwards by letter that the Company would not furnish the names of the employees in the unit because of what Bowden claimed was the "large number of instances involving violence and intimidation by strikers against employees working" (A. 39; 74). Enclosed was a letter, dated June 12, 1967, from Vice President Madison to Bowden, which referred to an area wage survey as supporting the Company's proposed wage increase for certain skilled employees (A. 39; 76, 499). On October 2, 1967, without notice to the Union, the Company put into effect wage increases in the amount offered to the Union during bargaining negotiations (A. 40; 393-394; 500-501, 400-401). No further bargaining sessions were held, and no agreement was reached.

II. THE BOARD'S ORIGINAL DECISION

Upon the foregoing facts, the Board found in its original decision (A. 58, 40, 48) that the Company violated Section 8(a)(5) and (1) of the Act

by failing to bargain in good faith with the Union on and after November 28, 1966, the date of the first bargaining session. The Board also found (A. 45) that the Company violated Section 8(a)(3) and (1) of the Act by discharging and refusing to reinstate unfair labor practice strikers to their former jobs. The Board further found (A. 58-59) that the Company violated Section 8(a)(5) and (1) by refusing to comply with the Union's request for area wage survey data within a reasonable time, and by refusing to supply the Union with the names and job classifications of employees currently working in the bargaining unit, along with their rates of pay. Finally, the Board found (A. 45, 46) that the Company violated Section 8(a)(5) and (1) of the Act by unilaterally increasing wages on October 2, 1967; and that its promise of a wage increase to employees who did not support the strike was violative of Section 8(a)(1).

III. THE COURT'S DECISION REMANDING TO THE BOARD FOR RECONSIDERATION

The Court (Circuit Judge Tamm and District Judge Matthews, with Chief Judge Bazelon dissenting) remanded the case for reconsideration of the Board's finding that the Company bargained in bad faith. The panel majority found that "there is evidence in the record from which to conclude that the employer was not acting in good faith", but held that some of the language used by the Trial Examiner indicated that the finding of bad faith may have been "based on the fact that the Board did not approve of certain of the proposals advanced by the Employer in the course of negotiations" 441 F.2d at 1007, 1009. Although recognizing that "it would be legitimate for the Board to infer some degree of bad faith from the Company's insistence upon a particularly disadvantageous proposal", the Court was of the view that the Examiner's finding "to the effect that one employer concession might 'compensate' the employees for a concession they have made through their representatives" entailed more than "a

mere inference as to the Employer's stated of mind. . . . When the Board bases a finding of bad faith on the fact that the Employer has not made a certain concession to the Union, then the Board is adding to the obligations of good faith bargaining a requirement that certain concessions be made" (441 F.2d at 1010). The Court also found improper the Examiner's statement that the Company made no "meaningful" concessions on any major issue, since the Company had made an eight cent wage offer and there was no evidence that its wage levels were below Jacksonville area standards (441 F.2d at 1011-1012).

The Court concluded that these "errors may well have infected the process by which the Board found the Employer guilty of unfair labor practices and of a failure to bargain in good faith; in fairness to the employer, however reprehensible its behavior, we must remand the proceedings to the Board for reconsideration" (441 F.2d 1008).¹⁰

IV. THE BOARD'S SUPPLEMENTAL DECISION AND ORDER

In its Supplemental Decision, the Board stated that it had "reexamined the entire record, including the court's opinion" and had decided to reaffirm its original Decision and Order, for reasons which the Board specifically set forth. Thus, the Board "reviewed those portions of the Trial Examiner's Decision . . . which the court concluded led to an inference that the Company must affirmatively make concessions during bargaining, as well as the Examiner's statement that the Company made no 'meaningful' concessions on any major issue despite the Company's 8-cent wage offer." As to the first point, the Board recognized that "an employer is normally not required to make any concessions in bargaining". The Board

¹⁰ The Court postponed consideration of the other issues in the case "[u]ntil the Board has reconsidered the questions raised by this opinion" (441 F.2d at 1012).

stated that "to the extent the language used by the Trial Examiner may so imply, we do not rely on it." The Board also expressly declined to adopt what it described as the "Trial Examiner's incorrect characterization of the 8-cent wage offer as not meaningful since", as the Board recognized, "standing alone, it may well be construed as a reasonable offer." (Supp. App. A-3). The Board held (Supp. App. A-3):

Our review of the entire record, including the disavowal of certain language noted previously, does not, however, persuade us that a different conclusion is warranted here and we still conclude that the Employer has failed to bargain in good faith based upon the following: (1) As background, the Company statements prior to the representation election to the effect that the Company did not want the Union and would not sign a contract if the Union won the election; (2) the Company's failure to cooperate with the Union in scheduling bargaining sessions; (3) the Company's failure to supply the Union with wage data within a reasonable time after its request therefor; (4) the promises of wage increases to employees who did not support the strike; and (5) the Company's insistence on contract proposals which would have drastically curtailed the Union's representation rights. These proposals included a management rights provision which would have vested in management broad authority to take action affecting working conditions without consulting the Union and without subjecting such action to review in a grievance arbitration proceeding. Our inference of bad faith was and is based on the totality of the Employer's position, and not his position on any single contract provision.

For these reasons the Board reaffirmed the "findings, conclusions, and remedy provided in our original Decision and Order" (Supp. App. A-3).

The Board's Order as reaffirmed (A. 49-52, 60-61, Supp. App. A-3) requires the Company to cease and desist from the unfair labor practices

found, and from in any other manner interfering with, restraining or coercing its employees in the exercise of their protected rights. Affirmatively, the Board's Order requires the Company to bargain collectively and in good faith with the Union upon request, to offer immediate and full reinstatement to all the unfair labor practice strikers listed and to make them whole for any loss of pay suffered because of the Company's discrimination against them;¹¹ and to post appropriate notices.

ARGUMENT

- I. THE COMPANY'S DILATORY CONDUCT, ITS REFUSAL TO SUPPLY RELEVANT WAGE INFORMATION WITHIN A REASONABLE TIME, ITS GRANT OF UNILATERAL WAGE INCREASES, AND ITS OVERALL BAD FAITH BARGAINING, AMPLY SUPPORT THE BOARD'S SECTION 8(a)(5) FINDINGS.

A. The applicable principles

The duty to bargain collectively, which an employer and the duly designated representative of his employees owe one another under Section 8(a)(5) and 8(b)(3) of the Act, is defined in Section 8(d) of the Act as "the performance of the mutual obligation . . . to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require

¹¹ The Board ordered the backpay period "for each striker to begin 5 days after the date of such striker's application and to run until the date of reinstatement" Member Brown would have ordered backpay "from the date each received the Respondent's letters of March 16 and 17, or the date on which each applied for reinstatement, whichever is earlier." (A. 60). See *infra*, pp. 39-42.

the making of a concession. . . ." This statutory requirement of good faith "can have meaning only in its application to the particular facts of a particular case." *N.L.R.B. v. American National Insurance Co.*, 343 U.S. 395, 410 (1952). Accord: *Majure Transport Co. v. N.L.R.B.*, 198 F.2d 735 (C.A. 5, 1957); *N.L.R.B. v. Denton*, 217 F.2d 567, 570 (C.A. 5, 1954); cert. den., 348 U.S. 981; *N.L.R.B. v. Truitt Manufacturing Co.*, 351 U.S. 149, 153 (1956).

It is true, of course, as the statute specifies, that no party is required to make concessions, and that no one need yield any position fairly maintained. Further, "the Act does not encourage a party to engage in fruitless marathon discussions at the expense of a frank statement and support of his position. And it is equally clear that the Board may not, either directly or indirectly, compel concessions or otherwise sit in judgment upon the substantive terms of collective bargaining agreements." *N.L.R.B. v. American National Insurance Co.*, *supra*, 343 U.S. at 404. On the other hand, "performance of the duty to bargain requires more than a willingness to enter upon a sterile discussion of non-management differences." *Id.*, at 402. Accord: *N.L.R.B. v. Texas Coca Cola Bottling Co.*, 365 F.2d 321, 322 (C.A. 5, 1966). "The bargaining required by the Act does not mean mere talk with the purpose of avoiding agreement, but a good faith effort to reach agreement. . . ." *N.L.R.B. v. Darlington Veneer Co.*, 236 F.2d 85, 88 (C.A. 4, 1956). "Good faith bargaining must be evinced by more than superficial efforts to negotiate a wage agreement. Good faith means sincerity, candor, and a willingness to negotiate toward the possibility of effecting compromises." *N.L.R.B. v. Generac Corp.*, 354 F.2d 625, 628 (C.A. 7, 1965). "[S]incerity of effort and intention to arrive at and consummate an agreement are requirements of statute." *N.L.R.B. v. National Shoes, Inc.*, 208 F.2d 688, 691 (C.A. 2, 1953). As Judge Brown pointed out in *N.L.R.B. v. Herman Sausage Co.*, 275 F.2d 229, 232 (C.A. 5, 1960):

“[W]hile the employer is assured these valuable rights [the right not to yield a position fairly maintained], he may not use them as a cloak. In approaching it from this vantage, one must recognize as well that bad faith is prohibited though done with sophistication and finesse. Consequently, to sit at a bargaining table, or to sit almost forever, or to make concessions here and there, could be the very means by which to conceal a purposeful strategy to make bargaining futile or fail. Hence, as we have said in more colorful language, it takes more than mere ‘surface bargaining,’ or ‘shadow boxing to a draw,’ or ‘giving the Union a runaround while purporting to be meeting with the Union for purpose of collective bargaining.’”

In short, parties “need not contract on any specific terms” but “they are bound to deal with each other in a serious attempt to resolve differences and reach a common ground.” *N.L.R.B. v. Insurance Agents’ International Union*, 361 U.S. 477, 486 (1960), quoted in this Court’s decision herein, 441 F.2d at 1010.

As this Court observed in *Fruit and Vegetable Packers v. N.L.R.B.*, 114 App. D.C. 388, 390, 316 F.2d 389, 391 (1963), the “degree of cooperation [which] is to be required under any particular set of circumstances from the parties at the bargaining table, is largely a matter for the Board’s expertise.” In the instant case, the Board found that the Company did not discharge its obligation to bargain in good faith with the Union. This conclusion is wholly consistent with the principles discussed above, and is amply supported by the evidence.

B. The Company Refused to Meet at Reasonable Intervals and Failed to Bargain in Good Faith

As the Trial Examiner found, the Company’s conduct in the pre-election period “foreshadowed its failure to bargain in good faith”

(A. 40). All levels of Company management responded to the Union campaign with statements evidencing a strong hostility toward the Union, and several went so far as to tell the employees that the Company would not deal with the Union even if it succeeded in coming into the plant.¹²

Although this conduct occurred more than six months prior to filing of the unfair labor practice charges herein, and therefore could not themselves have been alleged as unfair labor practices (see Section 10(b) of the Act), it was clearly proper for the Board to consider them as background evidence. In short, the Section 10(b) limitation does not apply to "earlier events [which] may be utilized to shed light on the true character of matters occurring within the limitations period. . . ." *Local Lodge No. 1424, IAM v. N.L.R.B.*, 362 U.S. 411, 416-417 (1960); *N.L.R.B. v. Ritchie Mfg. Co.*, 354 F.2d 90, 99-100 (C.A. 8, 1965); *N.L.R.B. v. Stafford Trucking, Inc.*, 371 F.2d 244, 246-247 (C.A. 7, 1966). See *Local 833, UAW v. N.L.R.B.*, 112 App. D.C. 107, 114, 300 F.2d 699, 706 (1962), cert. den., 370 U.S. 911; *United Packinghouse, Food & Allied Workers v. N.L.R.B.*, 135 U.S. App. D.C. 111, 416 F.2d 1126, 1131, n. 8 (1969), cert. denied *sub nom.*, *Farmers Cooperative Compress v. United Packinghouse Workers*, 396 U.S. 903.

The Company's pre-election conduct in the instant case plainly sheds light on its approach to collective bargaining and helps explain its actions at the bargaining table. Thus, during the election campaign, the plant

¹² The Trial Examiner credited the testimony of General Counsel's as to the Company's pre-election conduct. Although the testimony of Company witnesses raised credibility conflicts as to most of these incidents, the Examiner, finding the employee testimony "quite detailed and mutually corroborative," and relying upon his observation of witness-stand demeanor, resolved these conflicts in favor of the General Counsel's witnesses. Credibility determinations, of course, are not disturbed on review absent very special circumstances not present here. *Joy Silk Mills v. N.L.R.B.*, 87 App. D.C. 360, 369, 185 F.2d 732, 741 (1949), cert. denied, 341 U.S. 914; *N.L.R.B. v. Warrensburg Board & Paper Corp.*, 340 F.2d 920, 922 (C.A. 2, 1965). See also, *N.L.R.B. v. Walton Mfg. Co.*, 369 U.S. 404, 408-409 (1962).

superintendent told the "whole night shift" that this was not a "union job" and that "as long as he had something to do with the plant" there "never would be a union brought in there" (A. 235). A Company vice-president warned employee Wright on another occasion that if the Union won the election, "we wouldn't get a contract because it was a non-union job" (A. 291). There was testimony that another vice-president told an employee that "one thing was sure", if the Union came in, "we'll never sign a contract." (A. 272). On yet a further occasion, the foundry foreman told an employee that the Company "would never sign a contract with any union" (A. 223). Another foreman told two employees that the Union would "never get a chance to win, because they wouldn't sign [a] contract under any circumstances" (A. 282). Finally, the Company president himself, in an anti-union pre-election campaign speech to the day shift employees, concluded his remarks by flatly warning the employees that the Company would not "have a union" (A. 252-253).¹³

The record indicates that the Company's approach to bargaining in the post-election period was merely an extension of this policy of adamant opposition to unionization. Thus, although the Company told the Union at the first meeting on November 28 that certain of the Union's proposals were acceptable, the Company came to the December 19 meeting with a contract proposal which modified some of the provisions tentatively agreed upon, and simply ignored or eliminated others. This kind of unresponsiveness itself suggests that the Company was not really interested in seeking a common ground for agreement. Moreover, the Company came to the bargaining table as infrequently as possible in the early months of negotiations. At the close of the first negotiating session, when Union

¹³ The Company's contention before this Court (Br. 16, 42) that employee Withers's account of President Russell's speech was hearsay, overlooks the fact that Withers specifically testified that he personally heard Russell tell employees that "we wouldn't have a union" (A. 253).

representative Edwards requested another meeting as soon as possible, and asked that negotiations be held on successive days, the Company refused on the ground that Bowden had a busy schedule and could not meet with the Union until three weeks later (A. 423). The Union objected to this delay but to no avail.

At the conclusion of the December 19 meeting, Union representative McCall again pressed for a Company commitment to an early meeting. Bowden claimed he had to check his office calendar. Union representative McCall gave Bowden the room number of the motel where he was staying in Jacksonville and said he would await Bowden's call. Bowden did not return the call. McCall telephoned Bowden's home that night, telephoned his office again the following morning, and tried his office again when he got back to Orlando, on each occasion requesting that Bowden be reminded of his promise to let McCall know about his schedule. These efforts were also unavailing.¹⁴

At the conclusion of the next session, on January 6, the Union once again sought a prompt resumption of negotiations. This time Bowden said he would not schedule a meeting until the Company's insurance representative, Horovitz, could attend, and that he would have to work out a date with Horovitz. Again the Union objected, pointing to the fact that there was no need to wait for Horovitz who after all would only be "talking about one item, anyway" (A. 474-475, 448). Again the Union's efforts were unsuccessful, and a meeting was not held until January 25.¹⁵

¹⁴ McCall finally reached Bowden at his home, and a meeting was scheduled for January 6 after Bowden objected to meeting over the holidays.

¹⁵ Horovitz appeared at the January 25 meeting, explained the Company's insurance and pension plan, and left. As noted *supra*, pp. 4-5, the Company had
(cont'd)

Thus, Company counsel avoided an early resumption of bargaining on one occasion by asserting that his schedule was full; on another by insisting over the Union's vigorous objection upon having the Company's insurance man present; and on another by simply not honoring an obligation to contact the Union representative about the scheduling of the next session — conduct which the Company characterized before this Court as "utter triviality" (Br. 34) but which the Board could surely view otherwise. Although the Company ascribed (Br. 33-34) the 21-day lapse between the first and second session to the Union's "outstanding request for [wage] information" and the "need to propose a complete new contract proposal which would be responsive to the Union's proposal as explained at the [first session]", the fact is that the Union had submitted its contract proposal to the Company long before the first session; that the Company's counterproposal was completely unresponsive to the union proposal "as explained" at the first session; and that the reasons belatedly advanced for the delay in scheduling the second meeting were not the reasons proffered by Company counsel when pressed by the Union for an early resumption of meetings.¹⁶

¹⁵ (cont'd) notified its employees on August 3, 1966, that it had worked out an increase in medical and life insurance coverage with its insurance carrier. According to this notice, however, the Company had to "place this new medical program on the shelf" because of the Union's representation claim. Although the Company insisted that negotiations be postponed until Horovitz could be present to explain the insurance and pension plan, it does not appear that Horovitz (or any other Company representative) mentioned the improvements previously worked out with the insurance company. In fact, as the Examiner found, the Company never offered the Union insurance benefits equal to those cited in the August 3rd notice to the employees (A. 41; 105, 457, 385-387).

¹⁶ According to the uncontradicted testimony of Union representative Edwards, Company counsel asserted that he had a "busy schedule" and that the "earliest date he could meet with us would be December the 19th" (A. 423).

This refusal to schedule reasonably frequent meetings, in the crucial early months of bargaining, clearly evidenced an intention to avoid meaningful negotiations. In any event, as the Examiner indicated (A. 40-41), even where the dilatory conduct of an employer's attorney is not a bargaining tactic but an unintended consequence of his firm's heavy workload, a violation of Section 8(a)(5) is found. See Section 8(d) of the Act. A delay in collective bargaining "entails more than mere postponement of an ordinary business transaction, for the passage of time itself, while employees grow disaffected and impatient at their designated bargaining agent's failure to report progress, weakens the unity and economic power of the group, and impairs the Union's ability to secure a beneficial contract. The Act . . . does not permit an employer to secure, even unintentionally, a dominant position at the bargaining table by means of unreasonable delay." *"M" System, Inc.*, 129 NLRB 527, 548-549 (1960); *Burgie Vinegar Co.*, 71 NLRB 829, 830 (1946). As the Court held in *N.L.R.B. v. Exchange Parts Co.*, 339 F.2d 829, 832-833 (C.A. 5, 1965), the duty to meet and confer with reasonable frequency is an affirmative obligation which exists apart from any deliberate effort on the part of the employer to undermine bargaining:

It is understandable that in a busy law practice some difficulty arises in giving as prompt consideration to the requests of a representative of the opposing side as would entirely satisfy the latter. Nevertheless, we conclude that the inherent difficulty arising when a lawyer in full practice represents the employer in bargaining sessions, does not exempt the employer from the normal requirements that nothing be done for the purpose of stifling an opportunity for discussion. There remains on the employer the positive legal duty to meet and confer with the Union at reasonable times and intervals.

Accord: *N.L.R.B. v. Southland Cork Co.*, 342 F.2d 702, 704-705 (C.A. 4, 1965).

As the Board found (Supp. App. A-3, A. 58), the Company also evidenced bad faith by refusing to furnish the Union with relevant information which the Union requested. The Company first ignored and then refused the Union's request for a schedule of wage rates paid to striker replacements; and a request for an area wage survey, which the Company had itself relied upon in formulating a wage offer for four job classifications, was not honored until two and one-half months later. While this conduct itself was found to constitute a violation of Section 8(a)(5), such action also sheds light on the Company's overall approach to bargaining. Cf. *Local 833, UAW v. N.L.R.B.*, *supra*, 112 App. D.C. at 114, 300 F.2d at 706. Although the Company contended (Br. 47) that there was no "urgency" in supplying the area wage survey information because the Union did not request such information until four months after the Company made its wage proposal, the Union's letter of May 31, 1967, indicates that the wage issue had been brought to a head by reports reaching the Union that striker replacements were then receiving premium rates (A. 139). It was hardly surprising, therefore, that the Union should, on the occasion of its requesting a schedule of current wage rates, also request substantiation of the Company's wage position at the bargaining table; and the record indicates that the Company could readily have complied since the requested wage survey information was in the hands of Company counsel as early as mid-June. The Company has not explained why this data was not transmitted to the Union until two months later, after the Union had twice more requested it.

The Company took the same negative approach to the Union's request for wage schedules in effect during the strike. No action was taken at all for some two months after the initial request. Then, in letters dated

July 31 and August 15, the Company took the position that the Union would have to take the Company's word for it that there was no instance of a striker replacement receiving premium pay; and before this Court the Company asserted (Br. 49) that the "primary reason" why it refused to furnish this information was that "no striker replacement was receiving a rate of pay in excess of what the striker was receiving before the strike * * *". This reasoning, of course, assumes the premise which the Union sought to examine for itself, for its request was not for a Company statement on replacement pay but for the data upon which an independent comparison could be made. Indeed, such arguments amount to obvious rationalizations for conduct which further evidences a lack of good faith at the bargaining table.

The Company's dilatoriness in the scheduling of meetings and its refusal to supply relevant information upon request were coupled with a bargaining stance which in substantial part called for the surrender of the employees' bargaining rights for the term of the contract. Thus, Article II A of its proposed contract, titled "Management Rights," vested in the Company, "not subject to arbitration", the right to establish, abolish or change jobs; to change materials, products, processes, and equipment; to subcontract or discontinue operations; and, "subject to the provisions of this agreement," the right to schedule and assign work, to recall laid-off employees, and to demote, suspend, discipline, or discharge employees. Article II B further reserved to the Company, without recourse to arbitration, "any and all management rights, prerogatives and privileges" not "specifically limited" by the contract. Article VII E, Grievances, excluded from the grievance procedure "Company prerogatives and reserved rights of management." Article VIII, Arbitration, similarly excluded reserved management rights from arbitration. The Company coupled these provisions with a stringent no-strike clause and throughout negotiations insisted

upon the voluntary arbitration of grievances. *Supra*, p. 8. Finally, under Article XII, Contract Constitutes Entire Agreement of Parties, the contract settled "all matters of collective bargaining for and during its term" and the parties waived their right to bargain on matters not covered by the contract "even though such subjects or matters may not have been within the knowledge or contemplation of either or both parties at the time they negotiated or signed this Agreement." (A. 98-108).

In the absence of a contract, of course, the employees would have retained the right to bargain collectively or grieve through the Union over such vitally important matters as employee discipline and discharge, assigning of work, job content, recall of laid-off employees, and subcontracting of unit work; and the employees would have been able to strike to secure a satisfactory settlement of disputes arising over these terms and conditions of employment. The Company's proposed management prerogatives clause would not only have removed these and many other matters from the arena of bargaining but would have conferred unbridled discretion on the Company to take any action it wished without subjecting such action to review under grievance or arbitration procedures, while at the same denying to employees the right to strike in the event such discretion should be abused. Indeed, the Company's bargaining position if accepted by the Union would have left the employees completely defenseless against a wide range of personnel action no matter how grossly unfair or destructive of vital legitimate employee interests. As the Board properly found, this Company insistence "on contract proposals which would have drastically curtailed the Union's representation rights" further evidenced the fact that the Company was not seeking agreement at the bargaining table.

Finally, the record shows that Superintendent Peacock told several employees, only moments after the strike began in protest over the Company's bargaining tactics, that the "guys who remain in the plant after the

other guys walked out, would receive a ten-cent raise on the hour"¹⁷ (A. 371). The Act, of course, prohibits an employer from promising benefits to employees in order to discourage them from engaging in protected activity, and the superintendent's remarks plainly constituted unlawful interference with the employee's right to strike. *Joy Silk Mills v. N.L.R.B.*, 87 App. D.C. 360, 185 F.2d 732, 739 (1950), cert. denied, 341 U.S. 914. *N.L.R.B. v. Fotochrome, Inc.*, 343 F.2d 631, 634 (C.A. 2, 1965), cert. denied, 382 U.S. 833. Moreover, such a blatantly unlawful attempt to undermine the Union's authority provided further indication that the Company was not interested in a settlement of differences at the bargaining table. By offering a wage increase to employees who abandoned the Union at this critical juncture — an increase which was even in excess of what the Company was offering the Union at the bargaining table — the Company only confirmed the fact that its policy was one of avoiding real bargaining on wages and other issues.

The foregoing facts amply support the Board's finding that the Company did not "deal with [the Company] in a serious attempt to resolve differences and reach a common ground. . . ." *N.L.R.B. v. Insurance Agents' International Union, supra*, 361 U.S. at 486. Furthermore, this Court has already reviewed the record in this case and found that "[t]here is evidence in the record from which to conclude that the Employer was not acting in good faith. . . . the record reflects no glory on this Employer; we are in no way tempted to commend the Company for its part in this proceeding." 441 F.2d at 1007, 1008. The evidence which the Court cited as supporting the Board's finding of bad faith is the same evidence

¹⁷ It was Peacock who earlier had warned the entire night shift that a union would "never" be "brought in" so long as he had "something to do with the Plant" — remarks which the Company urged this Court to disregard as mere campaign oratory (Br. 39).

which the Board cited as the basis for reaffirming its finding of bad faith in the remand proceeding. Thus, as the Court observed (441 F.2d at 1007-1008):

It was apparent, for example, that the Employer from the beginning had not wanted a union and had done its best to persuade the employees to vote against union representation. Even after the Union was certified as the collective bargaining agent, a residue of this antipathy remained; the Board agreed with the Examiner that there was evidence of this hostility toward the Union in the harshness of the contract terms the Employer proposed. Further support for the bad faith thesis was gained from the Employer's long delay in supplying data on which certain wage offers purportedly were based, and from a refusal to provide certain other information in the form requested by the Union. There was also evidence of an informal (and highly inappropriate) offer, on the eve of the strike, of a ten cent per hour raise for those workers who stayed on the job. Finally, there was at least some evidence from which to infer, as the Board did, that the Employer dragged its feet when urged by the Board to schedule frequent negotiating sessions.

It is apparent, therefore, that the Court has already substantially resolved the basic question of fact in this case, namely, whether there is sufficient evidentiary support for the Board's finding of bad faith.

Although the Company states in its Answer that enforcement should be denied on the ground that the Board "did not properly consider the guidelines set forth in the Court's Remand Order and Opinion," the Board's Supplemental Decision plainly demonstrated that the Board carefully followed the Court's instructions. The Board recognized that an employer is not normally required to make any concessions at the bargaining table and emphasized that its finding of bad faith was not predicated upon any such misconception of the Company's obligations under

the Act. The Board also acknowledged that the Trial Examiner erred by indirectly characterizing the Company's 8-cent wage proposal as not "meaningful." The Board indicated in plain language that its finding of bad faith was based, not upon its disapproval of the substantive content of any Company proposal, but rather upon specified evidence which in its view demonstrated that the Company did not approach the bargaining table with candor and a sincere desire to reach agreement.

In drawing an inference as to the Company's state of mind the Board was not, of course, required to ignore the nature of the Company's proposals at the bargaining table. As this Court observed in its original decision herein (441 F.2d at 1010):

We agree, as the Examiner found, that "good faith or its lack is a question of fact as to state of mind, and positions taken at the bargaining table, considered in the context of the whole case, are manifestations of the state of mind with which negotiations are conducted." (App. 42) Thus it would be legitimate for the Board to infer some degree of bad faith from the Company's insistence on a particularly disadvantageous proposal.

The Board properly found some evidence of bad faith in the Company's proposed management rights clause when viewed in the context of its overall bargaining position. These proposals called for a sweeping relinquishment by the Union of the employees' right to representation — a fact found by the Trial Examiner and the Board in its original Decision and not seriously disputed by the Company. The Board's finding that the Company's insistence upon these proposals constituted some evidence of bad faith is based upon the demonstrable fact that these proposals were highly disadvantageous to the employees; it is not based upon any value-judgment as to the fairness or legal sufficiency of these proposals. The Board did not hold, nor could it have, that the Company may not

lawfully insist upon such proposals; rather, the Board held in effect that these proposals were but part of a "purposeful strategy to make bargaining futile or fail" (*N.L.R.B. v. Herman Sausage Co.*, *supra*, 275 F.2d at 231-232, A. 44). It was the Company's approach to bargaining and not its proposals which the Board found wanting.

C. The Company's withholding of wage and related information was itself an unfair labor practice.

"There can be no question," the Supreme Court has observed, "of the general obligation of an employer to provide information that is needed by the bargaining representative [of his employees] for the proper performance of its duties." *N.L.R.B. v. Acme Industrial Co.*, 385 U.S. 432, 432-436 (1967). Deriving as it does from a union's responsibilities as exclusive representative of all unit employees, the employer's duty of disclosure is commensurate with those responsibilities. Accordingly, the employer has a duty to supply such information not only in connection with the processing of grievances, but also during the course of contract negotiations. *N.L.R.B. v. Acme Industrial Co.*, *supra*, 385 U.S. at 436; *Waycross Sportswear, Inc. v. N.L.R.B.*, 403 F.2d 832 (C.A. 5, 1968).

It has been "repeatedly held," for example, "that employee representatives are entitled to wage information and related data in order to effectively negotiate over the rate of compensation." *N.L.R.B. v. Frontier Homes Corporation*, 371 F.2d 974, 978 (C.A. 8, 1967). Accord: *Timken Roller Bearing Company v. N.L.R.B.*, 325 F.2d 746, 750 (C.A. 6, 1963), cert. den., 376 U.S. 971; *N.L.R.B. v. Fitzgerald Mills Corporation*, 313 F.2d 260, 265 (C.A. 2, 1963), cert. den., 375 U.S. 834; *Curtiss-Wright Corporation v. N.L.R.B.*, 347 F.2d 61, 68 (C.A. 3, 1965). Indeed, "because of the need to facilitate effective collective bargaining, a refusal to furnish [such] data is an unfair labor practice notwithstanding the good

faith of an employer in rejecting the request." *Curtiss-Wright Corp. v. N.L.R.B.*, *supra*, 347 F.2d at 68. Accord: *N.L.R.B. v. Celotex Corp.*, 364 F.2d 552, 554 (C.A. 5, 1966), cert. den., 385 U.S. 987.

In light of these principles, the Company's failure to comply promptly with the Union's request for the area wage survey information upon which the Company assertedly based its bargaining position in part, was a clear violation of Section 8(a)(5) of the Act. The Union had requested this information in writing on May 31, 1967. It was available to the Company no later than June 12, but not supplied until August 15, despite follow-up requests by the Union on July 27 and August 6. The Board could properly find, as a matter of law, that "the 2 months delay in transmitting such information was unreasonable. . . ." (A. 58). Cf. *N.L.R.B. v. May Aluminum, Inc.*, 398 F.2d 47, 51 (C.A. 5, 1968) (two-month delay); *General Electric Co. v. N.L.R.B.*, 414 F.2d 918, 924-925 (C.A. 4, 1969), cert. denied, 396 U.S. 1005 (refusal to supply area wage survey data).

Similarly unlawful was the Company's flat refusal to comply with the Union's request for the wage rates, job classifications and names of employees working during the strike period.¹⁸ The Union was clearly entitled to this information. *N.L.R.B. v. F. W. Woolworth Co.*, 352 U.S. 936 (1956), reversing *per curiam*, 235 F.2d 319 (C.A. 9, 1956); *International Woodworkers of America, Local Unions 6-7 and 6-122 v. N.L.R.B.*, 105 App. D.C. 37, 263 F.2d 483, 484-485 (1959), enforcing *Pine Industrial Relations Committee, Inc.*, 118 NLRB 1055, 1056-1059 (1957); *N.L.R.B.*

¹⁸ In reversing the Trial Examiner's finding that the Company had given a sufficient explanation for its refusal to supply this wage information, the Board simply reached a different conclusion on established facts. This was, of course, the Board's prerogative. *Oil, Chemical and Atomic Workers International Union, Local 3-89 v. N.L.R.B.*, 132 App. D.C. 43, 405 F.2d 1111, 1116 (1968), cert. den., 393 U.S. 914.

v. May Aluminum, Inc., supra, 398 F.2d at 51. Although the Company refused to supply it for the asserted reason that striker replacements had been subjected to "violence and intimidation," the facts are that the Company not only failed to supply the Union upon request with the names of employees who allegedly engaged in harassment (A. 145, 74) and failed to put on evidence of employee harassment as a defense to this allegation in the complaint;¹⁹ it failed even to put its own officials on the stand to testify that the Company had received reports of striker misconduct and feared that compliance with the Union's request would jeopardize the safety of non-strikers. The Board reasonably concluded that "mere assertions of the Company's position [do] not constitute affirmative proof of harassment" and that absent "positive evidence of employee harassment" the Union did not lose its right to such plainly relevant information.²⁰

**D. The unilateral wage increase on October 2
was also unlawful**

The last bargaining session was held on August 5, after the conclusion of the strike. No agreement was reached at that meeting. About a month

¹⁹ At one point the Company sought to introduce evidence of strike misconduct to show that certain strikers were not entitled to reinstatement. See *Local 833, UAW v. N.L.R.B., supra*, 112 App. D.C. at 115; 300 F.2d at 702. Company counsel agreed with the Trial Examiner's ruling, however, that such issues be left to the compliance stage of this proceeding. This colloquy plainly does not show, as the Company's brief to this Court suggested (Br. 49-50), that the Company was not permitted to defend its refusal to supply wage information by adducing evidence of striker harassment. (The pertinent portion of the record, not printed in the Appendix, is reproduced *infra*, pp. A.4-A.5).

²⁰ In his testimony, Union representative Edwards briefly alluded to picket line misconduct of an unspecified nature (A. 500). This does not, we submit, constitute affirmative proof warranting the Company's blanket refusal to supply this wage information.

later, the Company removed from its bulletin board a notice stating that it would be "unlawful" to give wage increases. On October 2, assertedly because of a "competitive disadvantage in the local labor market," but without consulting or notifying the Union, the Company put into effect the wage increases it had proposed at the bargaining table, *supra*, p. 16.

As the Supreme Court has held, "Unilateral action by an employer without prior discussion with the union does amount to a refusal to negotiate about the affected conditions of employment under negotiation, and must of necessity obstruct bargaining, contrary to the congressional policy. It will often disclose an unwillingness to agree with the union. It will rarely be justified by any reason of substance." *N.L.R.B. v. Katz*, 369 U.S. 736, 747 (1962). Before the Board, the Company sought to justify its unilateral action on the ground that the parties had bargained to an "impasse." As we have shown, however, the Company's negotiations with the Union had been carried on in bad faith, and "it is manifest that there can be no legally cognizable impasse, *i.e.*, a deadlock in negotiations which justifies unilateral action, if a cause of the deadlock is the failure of one of the parties to bargain in good faith." *Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO v. N.L.R.B.*, 320 F.2d 615, 621 (C.A. 3, 1963), cert. denied, 375 U.S. 984.

In light of the Company's overall bad-faith approach to bargaining, and particularly its failure to supply the Union with wage information necessary to evaluate the Company's position, the Board properly found (A. 45) that the Company's unilateral wage increase on October 2 was also an unfair labor practice; indeed, such action was further calculated to undermine the Union's position as bargaining agent, in violation of Section 8(a)(5) and (1) of the Act. Cf. *Industrial Union*, *supra*, 320 F.2d at 617, 620-622.

II. SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD SUPPORTS THE BOARD'S FINDINGS THAT THE COMPANY VIOLATED SECTION 8(a)(3) AND (1) OF THE ACT BY DISCHARGING AND REFUSING TO REINSTATE UNFAIR LABOR PRACTICE STRIKERS UPON THEIR UNCONDITIONAL OFFER TO RETURN TO WORK.

At the end of February 1967, the Union filed Section 8(a)(5) charges with the Board and the employees went out on strike to protest the Company's failure to bargain in good faith (A. 492-493, 127).²¹ It is well settled, of course, that a walkout in protest over employer violations of the Act is an unfair labor practice strike and that, on its termination, the strikers are entitled to full reinstatement regardless of whether replacements have been hired to take their jobs. *Mastro Plastics Corp. v. N.L.R.B.*, 350 U.S. 270, 278 (1956); *United Steelworkers of America, AFL-CIO, Local 5571 v. N.L.R.B.*, 130 App. D.C. 369, 401 F.2d 434, 438 (1968), cert. den., 395 U.S. 946; *Kohler Co. v. N.L.R.B.*, 120 U.S. App. D.C., 259, 345 F.2d 748, 749 (1965), cert. denied, 382 U.S. 836; *Shattuck Denn Mining Corp. v. N.L.R.B.*, 362 F.2d 466, 471 (C.A. 9, 1966); *N.L.R.B. v. Sea-Land Service, Inc.*, 356 F.2d 955, 966 (C.A. 1, 1966), cert. denied, 385 U.S. 900.

The record shows that some two weeks after the strike began, the Company sent letters to approximately 160 striking employees advising them that they had been permanently replaced and were terminated. This purported discharge of unfair labor practice strikers who had been replaced was itself violative of Section 8(a)(3) and (1) of the Act. *N.L.R.B. v. Farrell Co., Inc.*, 360 F.2d 205, 208 (C.A. 2, 1966). Accord: *Mastro*

²¹ Union representative Edwards testified without contradiction that when the employees voted down the Company's proposed contract in late February, they also resolved to strike "on the ground that the Company had not bargained in good faith" (A. 492-493).

Plastics Corp. v. N.L.R.B., *supra*, 350 U.S. at 278 (1956); *N.L.R.B. v. Comfort, Inc.*, 365 F.2d 867, 874 (C.A. 8, 1966). The Company also told strikers who individually applied for reinstatement that they would have to apply for work as new employees. Finally, when the Union unconditionally applied for reinstatement on behalf of all striking employees on July 9, 1967, the Company, although offering employment in some cases, refused to reinstate any striking employee to his former position, insisting that each striker apply as a new employee. As unfair labor practice strikers, these employees were entitled to prompt and full reinstatement to their former positions; and the Company's refusal to do this violated Section 8(a)(3) and (1) of the Act. *Mastro Plastics Corp. v. N.L.R.B.*, *supra*, 350 U.S. at 278; and cases cited *supra*, p. 38.

III. THE BOARD'S ORDER IS PROPER

The Union asserts that the Board should have awarded backpay to most of the strikers for the period beginning March 16 and 17, 1967, when the Company notified these strikers that they had been replaced and were therefore terminated. This Court has recognized, however, that "the Board's power to fashion remedies places a premium upon agency expertise and experience, and the broad discretion involved is for the agency and not the court to exercise." *United Steelworkers of America, AFL-CIO, Local 5571 v. N.L.R.B.*, *supra*, 130 App. D.C. 369, 401 F.2d at 438; *Amalgamated Clothing Workers of America v. N.L.R.B.*, 125 App. D.C. 275, 281, 371 F.2d 740, 746 (1966). See also *Office & Professional Employees Intl. Union v. N.L.R.B.*, 136 App. D.C. 12, 419 F.2d 314, 321-322 (1969); *United Hatters v. N.L.R.B.*, 126 App. D.C. 149, 151-152, 375 F.2d 325, 327-328 (1967). Consequently, "It is for the Board, not the Courts, to determine how the effect of prior unfair labor practices may be expunged." *International Assn. of Machinists v. N.L.R.B.*, 311 U.S.

72, 82 (1940); *Fibreboard Paper Products Corp. v. N.L.R.B.*, 379 U.S. 203, 216 (1964). Accord: *Consolo v. Federal Maritime Commission*, 383 U.S. 607, 621 (1966).

The Board has long held that unfair labor practice strikers are entitled to backpay only from the date they request reinstatement.²² Union demands for backpay at some point in time antecedent to that event has been consistently refused by the Board, and such refusal has been approved by this Court. See *United Steelworkers of America, AFL-CIO, Local 5571 v. N.L.R.B.*, *supra*, 130 App. D.C. 369, 401 F.2d at 438 (order sought by union requiring backpay to run from date unfair labor practice strikers were replaced by employer); *Louisville Typographical Union No. 10, ITU v. N.L.R.B.*, 67 LRRM 2462 (C.A. D.C.), decided *per curiam*, December 22, 1967 (order sought requiring backpay to run from inception of unfair labor practice strike); *Food Store Employees Union, Local 347 v. N.L.R.B.*, 134 App. D.C. 133, 413 F.2d 407 (1969) (same). Moreover, the Board's position that strikers — including unfair labor practice strikers — who are discharged during the course of the strike must abandon the strike before they are entitled to backpay, has specifically been approved by the courts. *Golay & Co., Inc. v. N.L.R.B.*, 371 F.2d 259, 263 (C.A. 7, 1966), cert. denied, 387 U.S. 944; *N.L.R.B. v. Globe Wireless Co.*, 193 F.2d 748, 752 (C.A. 9, 1951); *N.L.R.B. v. Leach*, 234 F.2d 400, 401 (C.A. 3, 1956); Cf. *N.L.R.B. v. Comfort, Inc.*, 365 F.2d 867, 877-878 (C.A. 8, 1966).

²² "To award backpay to such strikers [who had not applied for reinstatement], no matter how flagrant an employer's unfair labor practices might be, would, in our opinion, not only encourage, but also place a premium upon resort by employees to industrial strife and the interruption of commerce in order to obtain redress of wrongs, rather than promote recourse to the orderly administrative process established by the Act." *Volney Felt Mills, Inc.*, 70 NLRB 908, 910 (1946).

See also, *Sea-Way Distributing, Inc.*, 143 NLRB 460 (1963); *M. R. & R. Trucking Co.*, 178 NLRB No. 35, slip. decision 20, n. 35, (1969) (three copies of this decision have been lodged with the Court); *Baldwin County Electric Membership Corp.*, 145 NLRB 1316, 1319 (1964).

The Union contends that the strikers here were necessarily discouraged from applying for reinstatement when they were told by their employer that they had been discharged. This contention is without merit. These employees had authorized the Union to call the strike, and had elected to withhold their services in support of it. Having assumed the status of strikers under the Union's leadership, and having remained on strike throughout the pre-discharge period, strikers who did not return to work in the post-discharge period presumably failed to do so because of their continued support of the strike. Since loss of wages during this period was the result of their own withholding of services, and was not the product of the unlawful discharges themselves, these employees are no more entitled to backpay for the period they remained on strike than are strikers generally.

For these reasons, the Board's policy of awarding backpay only upon an affirmative showing that a discharged striker has prematurely abandoned the strike, is a reasonable exercise of the Board's "discretion under Section 10(c) to order reinstatement with or without backpay 'as will effectuate the policies' of the Act under the circumstances of a particular case" (*Golay, supra*, 371 F.2d at 263). The individual employee may, of course, abandon the strike at any time prior to its termination, and if the employee is an unfair labor practice striker, or an economic striker who has not been replaced, he is entitled to backpay if the employer does not promptly reinstate him. Several employees individually abandoned the strike in the instant case, and the Board's order awards backpay to these employees from the date of the employer's refusal to reinstate them. As to the

remaining strikers, however, the Board properly tolled backpay until the Union itself abandoned the strike and requested reinstatement on their behalf. *Golay, supra*, 371 F.2d 263.

In short, it "cannot [be said] that the traditional relief provided here will be so ineffective to enforce the policies of the Act as to be insufficient as a matter of law." *United Steelworkers of America, AFL-CIO, Local 5571 v. N.L.R.B., supra*, 130 App. D.C. 369, 401 F.2d at 438.

CONCLUSION

For the foregoing reasons, we respectfully submit that a decree should issue denying the Union's petition or review in No. 22,872, and granting enforcement of the Board's order²³ in No. 23,010.

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July 1971.

National Labor Relations Board.

²³ Although the Company asserted before the Board that a broad cease and desist order, restraining the Company from "in any other manner" violating its employees' Section 7 rights, is unwarranted in this case, such an order is appropriate where, as here, the employer's conduct evinces a predisposition to violate employee rights on a broad front. See *N.L.R.B. v. Southern Transport, Inc.*, 343 F.2d 558, 560-561 (C.A. 8, 1965); *N.L.R.B. v. Continental Oil Co.*, 179 F.2d 552, 555-556 (C.A. 10, 1950). Where such an unlawful purpose is shown, " * * * it is not necessary that all of the untravelled roads to that end be left open and that only the worn one be closed." *Electrical Workers v. N.L.R.B.*, 341 U.S. 694, 706 (1951).

SUPPLEMENTAL APPENDIX

190 NLRB No. 109

D-4905

Jacksonville, Fla.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FLORIDA MACHINE & FOUNDRY
COMPANY AND FLECO CORPORATION

Cases 12-CA-3831
12-CA-3915(1-3)

and

UNITED STEELWORKERS OF AMERICA,
AFL-CIO

SUPPLEMENTAL DECISION AND ORDER

On March 13, 1969, the National Labor Relations Board issued its Decision and Order in this proceeding¹ in which it found that the Respondent violated Section 8(a)(5) of the Act by failing to bargain in good faith during negotiations with the certified Union.² The Board also found that the Company violated Section 8(a)(3) by discharging and refusing to reinstate unfair labor practice strikers upon their unconditional offer to return to work. Finally, the Board found that the Company promised wage increases to non-strikers in return for their nonsupport of the strike, in violation of Section 8(a)(1).

Thereafter, a petition for review and application for enforcement of an order of the National Labor Relations Board was filed with the United States Circuit Court of Appeals for the District of Columbia. A majority of the court remanded the case³ for reconsideration of the Board's finding that the

¹ 174 NLRB No. 170.

² United Steelworkers of America, AFL-CIO.

³ *United Steelworkers of America, AFL-CIO v. N.L.R.B.; N.L.R.B. v. Florida Machine & Foundry Company and Fleco Corporation*, F.2d (December 4, 1970).

Company bargained in bad faith. In remanding, the court stated, *inter alia*, that "When the Board bases a finding of bad faith on the fact that the Employer has not made a certain concession to the Union, then the Board is adding to the obligations of good faith bargaining a requirement that certain concessions be made." The court also found improper the Examiner's statement that the Company made no "meaningful" concessions on any major issue, since the Company had made an 8-cent wage offer and there was no evidence that its wage levels were below Jacksonville area standards.

The court concluded that these "errors may well have infected the process by which the Board found the Employer guilty of unfair labor practices and of a failure to bargain in good faith; in fairness to the Employer, however reprehensible its behavior, we must remand the proceedings to the Board for reconsideration."⁴

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reexamined the entire record, including the court's opinion, and hereby reaffirms its Decision and Order for the reasons indicated hereafter.

We have reviewed those portions of the Trial Examiner's Decision cited by the court which the court concluded led to an inference that the Company must affirmatively make concessions during bargaining, as well as the Trial Examiner's statement that the Company made no "meaningful" concessions on any major issue despite the Company's 8-cent wage offer. As to the first point, as the court has properly pointed out, an employer is normally not required to make any concessions in bargaining and to the extent the

⁴ The court postponed consideration of the other issues in the case "until the Board has reconsidered the questions raised by this opinion."

language used by the Trial Examiner may so imply, we do not rely on it. Nor do we adopt the Trial Examiner's incorrect characterization of the 8-cent wage offer as not meaningful since, standing alone, it may well be construed as a reasonable offer.

Our review of the entire record, including the disavowal of certain language noted previously, does not, however, persuade us that a different conclusion is warranted here and we still conclude that the Employer has failed to bargain in good faith based upon the following: (1) As background, the company statements prior to the representation election to the effect that the Company did not want the Union and would not sign a contract if the Union won the election; (2) the Company's failure to cooperate with the Union in scheduling bargaining sessions; (3) the Company's failure to supply the Union with wage data within a reasonable time after its request therefor; (4) the promises of wage increases to employees who did not support the strike; and (5) the Company's insistence on contract proposals which would have drastically curtailed the Union's representation rights. These proposals included a management rights provision which would have vested in management broad authority to take action affecting working conditions without consulting the Union and without subjecting such action to review in a grievance arbitration proceeding. Our inference of bad faith was and is based on the totality of the Employer's position, and not his position on any single contract provision.

Accordingly, we reaffirm the findings, conclusions, and remedy provided in our original Decision and Order.

Dated, Washington, D.C.

John H. Fanning,	Member
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Gerald A. Brown,	Member
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Howard Jenkins, Jr.,	Member
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NATIONAL LABOR RELATIONS BOARD

(SEAL)

EXCERPTS FROM TRANSCRIPT IN CASE
12-CA-3831, 3915 inadvertently omitted from printed Appendix

[111] Q. (By Mr. Bowden) Were you arrested in connection with your activities during the strike.

MR. MATTSON: I object.

TRIAL EXAMINER: Your basis for the objection?

MR. MATTSON: If the Court will permit, both that the question itself as to an arrest is irrelevant; and secondly, I do not think it is pertinent to any issue that has been presented at this time.

MR. BOWDEN: Your Honor, I will make this observation on the record - and, I have no desire to litigate this [112] question here, but I want the record to show that it is the Company's position with reference to this man that he was engaged in violence while on strike, and is not eligible for reinstatement.

Now, whether that is a compliance question or whether that is to be litigated here, it does not make any difference to me, but I just want it on the record.

MR. MATTSON: Objection - and move that the statement be stricken from the record.

TRIAL EXAMINER: The statement may stand on the record for whatever value it may have.

MR. MATTSON: I understand from -

TRIAL EXAMINER: Are you making that statement to attack the witness' credibility?

MR. BOWDEN: No, I am - there is a certain amount of credibility, surely.

TRIAL EXAMINER: If there is a question of misconduct, it would go to the issue of reinstatement, I do not think that is before us at the present

time.

MR. BOWDEN: Well—

TRIAL EXAMINER: It is your position that this man never did apply for reinstatement - he never made a personal application. He was never sent a job offer, was he?

MR. BOWDEN: No, he was not.

TRIAL EXAMINER: So, the statement you have made goes to [113] matters that would be proper if there should be supplementary proceedings.

I am going to grant the General Counsel's motion—

MR. BOWDEN: I would just as soon not litigate that question here, Your Honor—

TRIAL EXAMINER: Well, it is on the record that you have made the statement—

MR. BOWDEN: Well, I want to be sure that we were not being foreclosed from raising this question.

TRIAL EXAMINER: It is on the record.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STEELWORKERS OF AMERICA, AFL-CIO,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

and

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

FLORIDA MACHINE & FOUNDRY COMPANY
AND FLECO CORPORATION,
Respondent.

On Petition for Review and Application for Enforcement
of an Order of The National Labor Relations Board

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

United States Court of Appeals
for the District of Columbia Circuit

FILED MAR 9 1970

Norman J. Paulson
CLERK

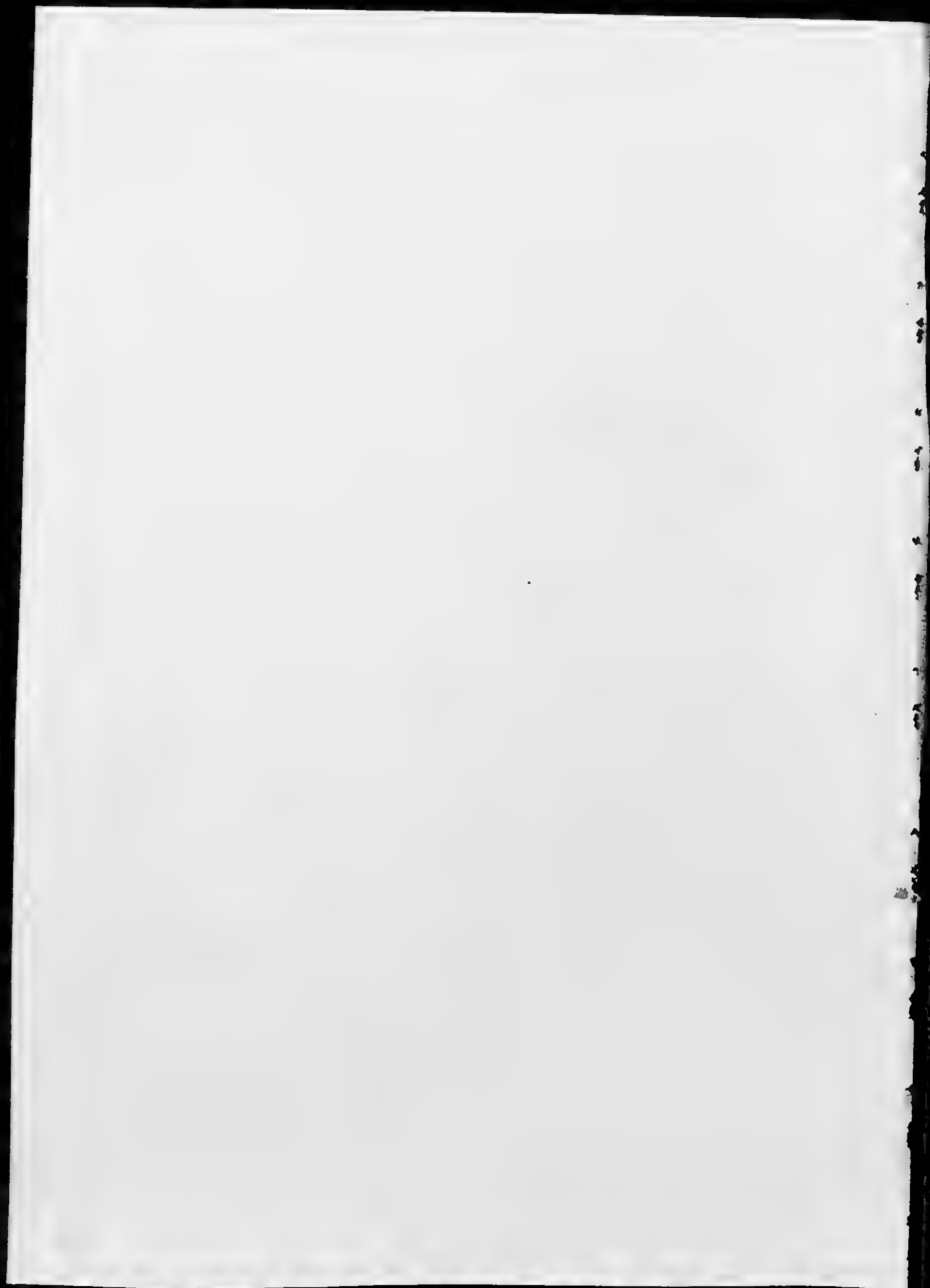
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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,872

UNITED STEELWORKERS OF AMERICA, AFL-CIO,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 23,010

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

FLORIDA MACHINE & FOUNDRY COMPANY
AND FLECO CORPORATION,
Respondent.

On Petition for Review and Application for Enforcement
of an Order of The National Labor Relations Board

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

STATEMENT OF QUESTIONS PRESENTED

Case No. 23,010

1. Whether substantial evidence on the whole record supports the Board's finding that the Company violated Section 8(a)(5) and (1) of the Act by failing to bargain in good faith with the Union on and after November 28, 1966.

2. Whether substantial evidence on the whole record supports the Board's finding that the Company violated Section 8(a)(5) and (1) of the Act by refusing to supply the Union with the names, job classifications, and wage rates of bargaining unit employees; and by refusing to comply with the Union's request for area wage survey information within a reasonable time.

3. Whether substantial evidence on the whole record supports the Board's finding that the Company violated Section 8(a)(5) and (1) of the Act by unilaterally increasing wages on October 2, 1967, and further violated Section 8(a)(1) by promising wage increases to employees in return for their nonsupport of the strike.

4. Whether substantial evidence on the whole record supports the Board's finding that the Company violated Section 8(a)(3) and (1) of the Act by discharging and refusing to reinstate unfair labor practice strikers.

Case No. 22,872

1. Whether the Board's order is proper.

In accordance with Rule 8(d) of the General Rules of this Court the Board states that this case is before the Court for the first time.

REFERENCE TO RULINGS

This consolidated proceeding is before the Court upon petition to review and application for enforcement of a decision and order of the National Labor Relations Board, issued against Florida Machine & Foundry Company and Fleco Corporation (hereinafter referred to as "the Company") on March 13, 1969. The Board's Order (A. 56-61, 22-56)¹ is reported at 174 NLRB No. 170.

The proceedings were consolidated by this Court on May 20, 1969. This Court has jurisdiction under Section 10(e) and (f) of the Act.

¹ "A." references are to portions of the record printed as the Appendix of the parties. References preceding a semicolon are to the Board's findings; those following are to the supporting evidence.

COUNTERSTATEMENT OF THE CASE

I. THE BOARD'S FINDINGS OF FACT

Briefly, the Board found that the Company violated Section 8(a)(5) and (1) of the Act by its failure to bargain in good faith with the certified bargaining representative of its employees, by unilaterally increasing wage rates, by refusing to supply the Union within a reasonable time with copies of area wage survey data, and by its failure to supply the Union with information concerning the identity, wage rates, and job classification of its employees. The Board also found that the Company violated Section 8(a)(3) and (1) of the Act by discharging and refusing to reinstate unfair labor practice strikers upon their unconditional offer to return to work. Finally, the Board found that the Company promised wage increases to nonstrikers in return for their nonsupport of the strike, in violation of Section 8(a)(1) of the Act. The facts upon which the Board relied in making these findings are summarized below.

A. The Company's pre-election conduct

The Company manufactures machinery parts at its plant in Jacksonville, Florida (A. 3, 7). In the Summer of 1966, following an organizing campaign, the Union² filed an election petition with the Board seeking to represent the Company's production and maintenance employees, and the Board's Regional Director scheduled an election for September 22 and 23 (A. 23).

Meanwhile, on August 3, 1966, the Company notified its employees that a revised insurance plan expanding hospital, medical and surgical benefits, and increasing life insurance to \$5,000, was scheduled to go into effect

² United Steelworkers of America, AFL-CIO.

on August 1 but had been put "on the shelf" because the Union had claimed representative status on August 2 (A. 33; 377-73). Approximately one month before the election, Plant Superintendent George Peacock told the "whole night shift" that he had heard "the boys was trying to get a union in there" but that it was not a "union job," and a union would never be brought in "as long as he had something to do with the plant." (A. 26; 235).

About two or three weeks before the election, the Company's vice presidents, Thomas Madison and Thomas Peacock, interviewed prospective voters (A. 24; 519). For example, Madison called employee Alex Chance into the production office and asked him if he knew anything about "the fellows . . . trying to get a Union in there." Chance answered in the negative, and Madison told him to report back "anybody trying to get a Union in here." (A. 24; 234). Chance agreed to do so, and Madison reminded him that the Company had had a bad strike in 1958. Madison remarked that Chance had a large family, and could not afford to lose his job. During the interview, Chance's personnel file was in front of Madison. (A. 24; 234).

James Kitchens and Thomas Lewis were called into the foundry office and asked by Madison how they felt about the Union (A. 24; 240, 246-247). They also were reminded about the 1958 strike. Madison told employee Eddie Brown that men had lost their jobs and homes during the 1958 strike, that if the Union came in now, it would cause strikes, and that he and the Company President did not want a Union (A. 24; 258-259).

Madison reminded employee Alexander Brown that Brown had five children, that he had worked 4½ years for the Company, that the Union was trying to get in, and that the Company did not want the Union. Madison asked Brown what he thought about the Union, and if he had

heard "anybody say anything about it." Brown replied that he was not for the Union, nor had he heard anyone talk about it (A. 24; 266).

Madison interviewed employee Joe Singleton in the old personnel office. Madison noted that Singleton had been with the Company "quite a while", and that he had given the Company "no trouble." Madison asked Singleton if he had been to the Union meetings and if he was a member of the Union. When Madison asked if Singleton remembered the 1958 strike, Singleton replied, "of course", whereupon Madison reminded him that a lot of men had had good jobs, but they had struck and lost their homes, their automobiles and other things. He added that "one thing was sure," if the Union came in, "we'll never sign a contract." (A. 24; 272)

Vice President Thomas Peacock held similar interviews. He told employee John Handley that he wanted to talk to him about the Union, and that he understood that Handley wanted a better job, adding that he would get this "after everything was over." He reminded Handley that Handley was "not getting any younger," that "according to the record" he had a big family, and that it was hard to get a job at his age. (A. 25; 228-229). Peacock spoke to employee Herbert Wright in the warehouse office. He showed Wright his personnel file and said Wright was "a good worker" who "didn't get into any trouble." When Peacock asked Wright what he thought about the Union, Wright said he thought it was "a good idea" because it would improve "working conditions and seniority and so forth." Peacock thereupon informed Wright that if the Union won, it would not get a contract because "it was a non-union job." He added that the men were making "good money," and then told Wright to get up and leave the office (A. 25; 290-291).

During this same period, at the beginning of September 1966, Foundry Foreman Frazier Rhoden came to the home of employee Harold Mays. It

was an unprecedented call, during which Rhoden said he understood that Mays was "one of the Union pushers." In a discussion about the Union, Rhoden declared that "the Company would never sign a contract with any union." (A. 26; 223, 505-507).³

Company officials also spoke to groups of employees about the coming election. President Franklin Russell "made a speech out in the front to everybody" in which he said that the Company did not want a union, that "it could be like it was in '58," and that employees who went "out" would lose their jobs (A. 25; 248). When Russell spoke to the day shift two or three weeks before the election, he talked about the 1958 strike, and urged the employees to vote against the Union, concluding his remarks by stating he was going to say "something that's not lawful for me to say. We won't have a union." (A. 25; 252, 253).

B. Bargaining sessions before the strike

The Board conducted a secret ballot election at the plant on September 22 and 23. There were approximately 300 employees in the unit (A. 35; 455). The Union won the election and was certified on October 3 as the collective bargaining representative of the Company's production and maintenance employees (A. 26).

The Union submitted a written contract proposal to the Company on October 10 (A. 26-27; 402-403, 77). The first bargaining session occurred on November 28 (A. 382).⁴ The parties reviewed the Union's proposed

³ Foreman Luke Morgan made a similar remark to employee Lephus Felton, pointing out that he knew how the Company President felt about unions, and that the Company would never sign a contract with the Union (A. 26; 282).

⁴ A meeting had been scheduled for October 27, but no bargaining occurred on that day since only a single employee-member of the Union's negotiating team appeared. The Company negotiators were present (27; 381-382).

contract, and agreed on several matters.⁵ Company attorney Otto Bowden said he would prepare a counterproposal for submission to the Union (A. 27; 423). Union representative Edwards urged the Company "to meet as soon as possible, preferably in a succession of days, so the negotiations would have some consistency and flow." Bowden refused, saying he had a busy schedule and could not meet again until December 19 (A. 27; 423). Although Edwards objected that this was "too much time," Bowden insisted that he had other commitments and the parties did not meet again until December 19 (A. 27; 423, 382).

At the December 19 meeting, the Company submitted a complete contract proposal which omitted or modified several of the terms agreed upon by the parties at the first meeting (A. 27; 404, 426-427, 98-116). Thus, previously agreed-upon provisions concerning holiday and vacation pay, leaves of absence, Union use of bulletin boards and submission of discharges to the contract grievance procedure, were either omitted from the Company proposal or were substantially altered (A. 27; 428-430). The Company proposal provided in substance that most decisions affecting working conditions would be reserved exclusively to the Company and would not be subject to the grievance procedure; that disputes which were subject to the grievance procedure could not be submitted to arbitration unless the "other party agrees to arbitrate the said grievance;" and that strikes (and lockouts) were prohibited for the duration of the agreement, except that a strike or lockout over a grievance was permissible if the grievance in question had been processed through the grievance procedure and a request to arbitrate

⁵ The parties agreed on recognition and union responsibility clauses, a 60-day probationary period for new employees, management control of hours of work, pay for a holiday occurring during an employee's vacation, no cumulative vacations, regular pay plus vacation pay if an employee elected to work during his scheduled vacation if requested to do so by the Company, leave of absence without loss of seniority for death in the family and serious illness, Union use of plant bulletin boards, and submission of discharges to the contract grievance procedure (A. 27; 420-422, 77-92).

had been denied by the other party (A. 27-32, 41-43; 98-99, 102-105, 106-107).

The Company proposal also made its work rules part of the contract, and retained its existing practices as to overtime work, vacations and holidays (A. 33; 99, 431, 436, 497, 108-109). The proposal incorporated the Company's current insurance benefits without the expanded coverage which the Company claimed to have "put on the shelf" in the pre-election period (A. 33; 105, 457, 451, 385-387). A "zipper" clause provided that each party "... unqualifiedly waives the right to request or require further collective bargaining with respect to any matter or subject not specifically referred to or covered by this Agreement, whether or not such matters have been discussed, even though such subjects or matters may not have been within the knowledge or contemplation of either or both parties at the time that they negotiated or signed this Agreement." (A. 32-33; 107-108).⁶

The proposal recited that job classifications and wage rates were "to be negotiated" (A. 33; 110). The Company representatives promptly advised the Union, however, that it would make no wage offer because a wage survey showed that its wages were equal to, or better than, those paid by other companies in the Jacksonville area (A. 34; 437-438). The Union rejected the Company's proposed management rights, Company rules, arbitration, no-strike and "zipper" clauses, and no agreement was reached on other issues which included seniority, grievance procedures, and economic items such as call-in pay, overtime pay, holidays and vacations (A. 34; 430-439).

⁶ The Union accepted certain of the Company's proposals with some modifications. These proposals included a recognition clause, union visitation of the plant, absenteeism, bulletin boards, production work by supervisors, some leave of absence provisions, a military clause, washing facilities and safety equipment (A. 32-33; 429-432, 435, 437-439). Union representative McCall said the Union would agree to the Company's proposals on union membership and activity "as long as [the Union] had the checkoff provision in the agreement." Bowden said the checkoff "would not bar us from getting a contract." (A. 33; 431, 445).

At the conclusion of the meeting, Union representative McCall asked Bowden, "When can we get back together again?" Bowden replied, "I can't tell you now. I have to go back to the office and look at my calendar". McCall then advised Bowden that he was staying "there [in Jacksonville] at the Holiday Inn." He gave Bowden his room number and said, "Give me a call when you check your calendar". (A. 34; 439-440). McCall waited at the motel for several hours but had no return call. McCall telephoned Bowden's home and was told that Bowden was "at a meeting." McCall said, "well, you tell him again that I called, and [that] I wish he would return my call about a meeting". Bowden did not return the call. The following morning, McCall phoned Bowden's office and talked to a secretary who said she would relay the message. When Bowden did not call, McCall checked out of the motel that morning and returned to Orlando, where he had his secretary call Bowden's office again. (A. 34; 440). Bowden still did not return the call (A. 440).

Some days later, McCall reached Bowden at his home. Bowden said he did not want to negotiate over the holidays. McCall suggested right after the holidays and a meeting was finally scheduled for January 6. (A. 34; 440-441).

The parties did not significantly change their bargaining positions at the January 6, 1967, meeting (A. 34; 446-450). At the end of the meeting, attorney Bowden said that the Company wanted its insurance representative,

Horovitz, at the next meeting, and that he would have to work out a meeting date with Horovitz (A. 34, 474-475, 448). Union representative Edwards urged the Company to meet more frequently, indicating that there was no need to wait for Horovitz "as he was just going to be talking about one item, anyhow." The Company, however, insisted that no meeting be scheduled until Horovitz could attend (A. 34; 474-475, 448).

The next meeting was held on January 25, 1967 (A. 35; 383). Horovitz explained the Company's insurance and pension plan and left the meeting (A. 35; 469-470). The Company offered to increase the daily hospital room rate from \$9 to \$15 a day and, based on a new survey, it also offered to increase the wages of four skilled classifications (A. 35; 454-457).⁷ The Company accepted some modified grievance-procedure language drafted by the Union. The Union proposal left open the question of arbitration, the Company continuing to object to any compulsory arbitration (A. 35; 458-459, 124-126). The parties' positions otherwise remained essentially unchanged (A. 35).

Meetings were held in the presence of a Federal Mediator on February 7, 13 and 22 (A. 35; 383). At the February 7 meeting, the Union offered, *inter alia*, to consider the Company's no-strike clause if it were modified to state that the Union would not "authorize" as opposed to "permit" a strike. The Union also offered to accept the Company's management rights clause, and to drop its demand for call-in pay, if the Company would increase wages 22 cents across the board, add a holiday, and increase hospital

⁷ This increase, however, applied only to about 30 of the 300 unit employees (A. 35; 456).

benefits to \$20 per day, room and board (A. 35; 480-481). The Company refused to modify its no-strike clause and turned down the Union's proposals on wages, holidays, and insurance benefits (A. 35; 484-486). It offered, however, to increase shift differentials by 2 cents and to give a wage increase of 8 cents across the board (A. 35; 483, 486). The positions of the parties did not change materially at the meetings on February 13 and 22 (A. 35; 487-492). At a Union meeting on February 26, the members rejected the Company's contract offer, and authorized a strike (A. 35-36; 492-493, 127).

C. The strike

The strike began at 9:30 p.m. on February 28, 1967 (A. 36; 127, 256, 260). That night, Plant Superintendent George Peacock told employees Alexander Brown and Elton Stewart "behind the furnace" that he appreciated their "staying in here and helping me out" and that he was going to give them "a dime raise" (A. 36; 263). Peacock also told four or five employees in the shipping area, including Elijah Fishburne, Johnnie Hall, and Clifford Hall, that the men who remained in the plant that night would receive a 10-cent an hour raise (A. 36; 371-372). The next morning, striker James Withers, a carpenter, was allowed to come into the plant to get some tools "to do some church work". As Withers unlocked his box, Vice President Thomas Peacock suggested that he "take it all" because he would not work there again (A. 36; 251, 256). On Friday, March 3, Plant Superintendent George Peacock told Alex Chance and one or two other employees who had come to the plant for their paychecks that they were replaced and terminated⁸ (A. 36; 236-237).

⁸ Chance was not in fact replaced until March 13, according to a list compiled from the Company's personnel records (A. 36; 217).

When striker Johnnie Snead, a crane operator, reported to the plant on Monday morning, March 13, and told Superintendent Peacock he wanted to go back to work, Peacock went to the main office and, on his return, told Snead he had been replaced, but that he could "put in an application and start over as a new man." Snead said, "I'll be damned, after 12 years?", and Peacock said, "That's the way it goes." Snead said he would not accept a job "as a new man" and asked about his checks. Peacock left to get Snead three checks due him (A. 36; 314-316).

Similarly, on March 15, when strikers J. E. Sarrells, Melvin Ponce, Raymond Miller, and Ralph Hodges told Foreman Luke Morgan they wanted to return to work, Morgan said they had been replaced and "would have to come back as new employees". As the men started back out, Personnel Manager Cline told Sarrells that they "could go back to work if [they] filled out the applications". Sarrells returned to the plant six weeks later and was hired as a set-up man at his old rate of pay but with loss of seniority and other privileges (A. 37; 326-328, 334-335, 340-341).

D. The Company sends termination letters to virtually all striking employees; the strike ends and the Union applies for reinstatement on behalf of the strikers

After the strike began, the Company was short of men in most of its job classifications. As a result, supervisory and office personnel performed some of the production work "as an emergency measure" (A. 38; 355). During March and April "new groups" of employees were brought to the plant by a motor vehicle with "quite a few seats in it — not a big bus." Many of those employees had no prior training in the type of work performed at the plant; they were hired on a 30-day probationary period; 10 to 15 percent of the new employees turned out to be "unsatisfactory"; and another 10 to 15 percent failed to show up after the first day or two of work (A. 38-39; 365-367).

On March 16 and 17, the Company sent letters to about 160 strikers advising them that they had been permanently replaced and were terminated (A. 37; 376-377, 72). The Company thereafter employed strikers only upon personal application at its personnel office and as new employees. Thus, when employees returned to the Company and asked for their jobs, they were advised by the Company to submit applications, and were told that when an opening occurred, they would be called back as new employees (A. 37; 242-243, 248-249, 299).

When welder Carl Hillyard asked about his job 3 or 4 weeks after the strike began, he was told by Production Coordinator Norman Wilcox, speaking for Foreman Luke Morgan, that Morgan had no job open for him (A. 37-38; 297-298, 516). Hillyard "a little bit" later asked another applicant for employment whether he had been hired by Morgan. This applicant, who was on his way to the personnel office, said he had been hired by Morgan. Hillyard asked him "what he was applying for" and was told "welder" (*ibid.*).

Similarly machinist George Loznicka asked Plant Superintendent George Peacock for work on May 30, saying that he "heard that if you wanted to go back you'd have to go back as a new man". Peacock said they had "plenty of work" and a place for Loznicka and that his rate of pay would be the same as it was before the strike. He instructed Foreman Grady Ivey to take Loznicka to the personnel office when he came in the next morning to "fill out an application and be photographed." Loznicka later that day decided he did not want to return as a new employee (A. 38; 294-296)

The strike end^{ed} on July 9, 1967. That day, the Union advised the Company by telegram that it had directed "all striking members . . . to return to work as soon as possible beginning" Monday morning, July 10; that some who

were out of town would "report in the near future;" and that the telegram was "the Union's official notice that all strikers hereby request to return to work." The telegram stated that the return to work was not conditioned upon any union demand "save that such employees be put to work on the same job each previously held or on a similar job of equivalent pay" (A. 38; 65-66). The Company thereafter accepted applications from strikers and recalled many of them to work as new employees. (A. 38; 242, 248-249, 255, 260, 299).

E. Bargaining meetings during and after the strike

The Company and the Union met in the presence of the Federal Mediator on March 14, May 1 and August 7, 1967 (A. 39; 493, 495, 383). At the March 14th meeting, two weeks after the beginning of the strike, no concessions were made by either party (A. 39; 493-494). At the May 1st meeting, the Union reduced its wage request from 20 to 18¢ across the board (A. 39; 496). On May 31, the Union wrote to the Company requesting the area survey data upon which the Company had based its offer of wage increases for four job classifications during the negotiations. The Union also requested the Company to supply the "names, job titles and rates of pay for each employee [in] the bargaining unit who is presently employed," so that the Union could assess reports reaching its office to the effect that the Company was paying striker replacements more than the strikers had earned prior to the strike (A. 39; 140).⁹ On June 7, Bowden advised the Union that he had forwarded the letter to the Company and would "be back in touch with you" as soon as he learned the facts concerning wage rates paid to striker replacements (A. 141). No mention was made of the wage survey and

⁹ The Company had supplied similar information on December 19, 1966, with respect to employees then in the bargaining unit. This was, of course, prior to the strike. (A. 427).

other data requested by the Union. Seven weeks later, having heard nothing further from the Union on this subject, the Union reminded Bowden of its May 31 request for information and again requested the Company to "make this data available" (A. 142). Bowden replied, by letter dated July 31, that the Company was not paying premium rates to those currently working. Again the Union's request for specific data was ignored (A. 143-144).

At the August 7 meeting, the Union offered concessions with regard to its "intent and purpose" clause, inclusion of Company rules in the contract, insurance, and physical examinations (A. 39; 497-499). It dropped its request for an additional holiday (A. 39; 497). The Company agreed to change the word "permit" to "authorize" in its no-strike clause (A. 39; 498).

The following day, August 8, Union representative Edwards notified Bowden by letter that the Union would accept a 15¢-an-hour general wage increase (A. 39; 145). Edwards once again asked Bowden for the names, jobs and rates of pay of the employees in the unit, and the area survey information (*ibid.*). Thereafter, on August 15, Bowden advised Edwards by letter that the Company would not furnish the names of the employees in the unit because of what Bowden claimed was the "large number of instances involving violence and intimidation by strikers against employees working" (A. 39; 74). Enclosed was a letter, dated June 12, 1967, from Vice President Madison to Bowden, which referred to an area wage survey as supporting the Company's proposed wage increase for certain skilled employees (A. 39; 76, 499). On October 2, 1967, without notice to the Union, the Company put into effect wage increases in the amount offered to the Union during bargaining negotiations (A. 40; 393-394; 500-501, 400-401). No further bargaining sessions were held, and no agreement was reached.

II. THE BOARD'S CONCLUSION AND ORDER

Upon the foregoing facts, the Board found (A. 58, 40, 48) that the Company violated Section 8(a)(5) and (1) of the Act by failing to bargain in good faith with the Union on and after November 28, 1966, the date of the first bargaining session. The Board also found (A. 45) that the Company violated Section 8(a)(3) and (1) of the Act by discharging and refusing to reinstate unfair labor practice strikers to their former jobs. The Board further found (A. 58-59) that the Company violated Section 8(a)(5) and (1) by refusing to comply with the Union's request for area wage survey data within a reasonable time, and by refusing to supply the Union with the names and job classifications of employees currently working in the bargaining unit, along with their rates of pay. Finally, the Board found (A. 45, 46) that the Company violated Section 8(a)(5) and (1) of the Act by unilaterally increasing wages on October 2, 1967; and that its promise of a wage increase to employees who did not support the strike was violative of Section 8(a)(1).

The Board's Order (A. 49-52, 60-61) requires the Company to cease and desist from the unfair labor practices found, and from in any other manner interfering with, restraining or coercing its employees in the exercise of their protected rights. Affirmatively, the Board's Order requires the Company to bargain collectively and in good faith with the Union upon request, to offer immediate and full reinstatement to all the unfair labor practice strikers listed and to make them whole for any loss of pay suffered because of the Company's discrimination against them;¹⁰ and to post appropriate notices.

¹⁰ The Board ordered the backpay period "for each striker to begin 5 days after the date of such striker's application and to run until the date of reinstatement . . ." Member Brown would have ordered backpay "from the date each received the Respondent's letters of March 16 and 17, or the date on which each applied for reinstatement, whichever is earlier." (A. 60). See *infra*, pp.

ARGUMENT

1. THE COMPANY'S DILATORY CONDUCT, ITS REFUSAL TO SUPPLY RELEVANT WAGE INFORMATION WITHIN A REASONABLE TIME, ITS GRANT OF UNILATERAL WAGE INCREASES, AND ITS OVERALL BAD FAITH BARGAINING, AMPLY SUPPORT THE BOARD'S SECTION 8(a)(5) FINDINGS.

A. The applicable principles

The duty to bargain collectively, which an employer and the duly designated representative of his employees owe one another under Section 8(a)(5) and 8(b)(3) of the Act, is defined in Section 8(d) of the Act as "the performance of the mutual obligation . . . to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession. . . ." This statutory requirement of good faith "can have meaning only in its application to the particular facts of a particular case." *N.L.R.B. v. American National Insurance Co.*, 343 U.S. 395, 410 (1952). Accord: *Majure Transport Co. v. N.L.R.B.*, 198 F.2d 735 (C.A. 5, (1957); *N.L.R.B. v. Denton*, 217 F.2d 567, 570 (C.A. 5, 1954); cert. den., 348 U.S. 981; *N.L.R.B. v. Truitt Manufacturing Co.*, 351 U.S. 149, 153 (1956).

It is true, of course, as the statute specifies, that no party is required to make concessions, and that no one need yield any position fairly maintained. Further, "the Act does not encourage a party to engage in fruitless marathon discussions at the expense of a frank statement and support of his position. And it is equally clear that the Board may not, either directly or indirectly, compel concessions or otherwise sit in judgment upon the substantive terms of collective bargaining agreements." *N.L.R.B. v. American*

National Insurance Co., *supra*, 343 U.S. at 404. On the other hand, "performance of the duty to bargain requires more than a willingness to enter upon a sterile discussion of non-management differences." *Id.*, at 402. Accord: *N.L.R.B. v. Texas Coca Cola Bottling Co.*, 365 F.2d 321, 322 (C.A. 5, 1966). "The bargaining required by the Act does not mean mere talk with the purpose of avoiding agreement, but a good faith effort to reach agreement. . . ." *N.L.R.B. v. Darlington Veneer Co.*, 236 F.2d 85, 88 (C.A. 4, 1956). "Good faith bargaining must be evinced by more than superficial efforts to negotiate a wage agreement. Good faith means sincerity, candor, and a willingness to negotiate toward the possibility of effecting compromises." *N.L.R.B. v. Generac Corp.*, 354 F.2d 625, 628 (C.A. 7, 1965). "[S]incerity of effort and intention to arrive at and consummate an agreement are requirements of statute." *N.L.R.B. v. National Shoes, Inc.*, 208 F.2d 688, 691 (C.A. 2, 1953). As Judge Brown pointed out in *N.L.R.B. v. Herman Sausage Co.*, 275 F.2d 229, 232 (C.A. 5, 1960):

"[W]hile the employer is assured these valuable rights [the right not to yield a position fairly maintained], he may not use them as a cloak. In approaching it from this vantage, one must recognize as well that bad faith is prohibited though done with sophistication and finesse. Consequently, to sit at a bargaining table, or to sit almost forever, or to make concessions here and there, could be the very means by which to conceal a purposeful strategy to make bargaining futile or fail. Hence, as we have said in more colorful language, it takes more than mere 'surface bargaining,' or 'shadow boxing to a draw,' or 'giving the Union a runaround while purporting to be meeting with the Union for purpose of collective bargaining.'"

As this Court observed in *Fruit and Vegetable Packers v. N.L.R.B.*, 114 App. D.C. 388, 316 F.2d 389, 391 (1963), the "degree of cooperation [which] is to be required under any particular set of circumstances from

the parties at the bargaining table, is largely a matter for the Board's expertise." In the instant case the Board found that the Company did not discharge its obligation to bargain in good faith with the Union. This conclusion is wholly consistent with the principles discussed above, and is amply supported by the evidence.

**B. The Company Refused to Meet at Reasonable Intervals
and Failed to Bargain in Good Faith**

As the Trial Examiner found, the Company's conduct in the pre-election period "foreshadowed its failure to bargain in good faith" (TXD-11). All levels of Company management responded to the Union campaign with statements evidencing a strong hostility toward the Union, and several went so far as to tell the employees that the Company would not deal with the Union even if it succeeded in coming into the plant.¹¹

Although this conduct occurred more than six months prior to filing of the unfair labor practice charges herein, and therefore could not themselves have been alleged as unfair labor practices (see Section 10(b) of the Act), it was clearly proper for the Board to consider them as background evidence. In short, the Section 10(b) limitation does not apply to "earlier events [which] may be utilized to shed light on the true character of matters occurring within the limitations period. . . ." *Local Lodge No. 1424,*

WITNESSES

¹¹ The Trial Examiner credited the testimony of General Counsel's, as to the Company's pre-election conduct. Although the testimony of Company witnesses raised credibility conflicts as to most of these incidents, the Examiner, finding the employee testimony "quite detailed and mutually corroborative," and relying upon his observation of witness-stand demeanor, resolved these conflicts in favor of the General Counsel's witnesses. Credibility determinations, of course, are not disturbed on review absent very special circumstances not present here. *Joy Silk Mills v. N.L.R.B.*, 87 App. D.C. 360, 369, 185 F.2d 732, 741 (1949), cert. denied, 341 U.S. 914; *N.L.R.B. v. Warrensburg Board & Paper Corp.*, 340 F.2d 920, 922 (C.A. 2, 1965). See also, *N.L.R.B. v. Walton Mfg. Co.*, 369 U.S. 404, 408-409 (1962).

IAM v. N.L.R.B., 362 U.S. 411, 416-417 (1960); *N.L.R.B. v. Ritchie Mfg. Co.*, 354 F.2d 90, 99-100 (C.A. 8, 1965); *N.L.R.B. v. Stafford Trucking, Inc.*, 371 F.2d 244, 246-247 (C.A. 7, 1966).

The Company's pre-election conduct in the instant case, although outside the limitations period, plainly sheds light on its approach to collective bargaining and helps explain its actions at the bargaining table. Thus, during the election campaign, the plant superintendent told the "whole night shift" that this was not a "union job" and that "as long as he had something to do with the plant" there "never would be a union brought in there" (A. 235). A Company vice-president warned employee Wright on another occasion that if the Union won the election, "we wouldn't get a contract because it was a non-union job" (A. 291). There was testimony that another vice-president told an employee that "one thing was sure", if the Union came in, "we'll never sign a contract" (A. 272). On yet a further occasion, the foundry foreman told an employee that the Company "would never sign a contract with any union" (A. 223). Another foreman told two employees that the Union would "never get a chance to win, because they wouldn't sign [a] contract under any circumstances" (A. 282). Finally, the Company president himself, in an anti-union pre-election campaign speech to the day shift employees, concluded his remarks by flatly warning the employees that "we won't have a union" (A. 252-253).

The Company's approach to bargaining in the post-election period was an extension of this policy of adamant opposition to unionization. The Company came to the bargaining table as infrequently as possible in the early months of negotiations, and took a bargaining position which gave the employees almost nothing while at the same time calling in practical effect for the surrender of their Section 7 rights. Thus, at the close of the first negotiating session, when Union representative Edwards requested another meeting as soon as possible, and asked that negotiations be held

on successive days, the Company refused on the ground that Bowden had a busy schedule and could not meet with the Union until three weeks later. The Union objected to this delay but to no avail.

At the conclusion of the December 19 meeting, Union representative McCall again pressed for a Company commitment to an early meeting. Bowden claimed he had to check his office calendar. Union representative McCall gave Bowden the room number of the motel where he was staying in Jacksonville and said he would await Bowden's call. Bowden did not return the call. McCall telephoned Bowden's home that night, telephoned his office again the following morning, and tried his office again when he got back to Orlando, on each occasion requesting that Bowden be reminded of his promise to let McCall know about his schedule. These efforts were also unavailing.¹²

At the conclusion of the next session, on January 6, the Union once again sought a prompt resumption of negotiations. This time Bowden said he would not schedule a meeting until the Company's insurance representative, Horovitz, could attend, and that he would have to work out a date with Horovitz. Again the Union objected, pointing to the fact that there was no need to wait for Horovitz who after all would only be "talking about one item, anyway" (A. 474-475, 448). Again the Union's efforts were unsuccessful, and a meeting was not held until January 25.¹³

¹² McCall finally reached Bowden at his home, and a meeting was scheduled for January 6 after Bowden objected to meeting over the holidays.

¹³ Horovitz appeared at the January 25 meeting, explained the Company's insurance and pension plan, and left. As noted *supra*, pp. 3-4, the Company had notified its employees on August 3, 1966, that it had worked out an increase in medical and life insurance coverage with its insurance carrier. According to this notice, however, the Company had to "place this new medical program on the shelf" because of the Union's representation claim. Although the Company insisted that negotiations be postponed until Horovitz could be present to explain the insurance and pension plan, it does not appear that Horovitz (or any other Company representative) mentioned the improvements previously worked out with the insurance company. In fact, as the Examiner found, the Company never offered the Union insurance benefits equal to those cited in the August 3rd notice to the employees (A. 41; 105, 457, 385-387).

This refusal to schedule reasonably frequent meetings, in the crucial early months of bargaining, clearly evidenced an intention to avoid meaningful negotiations. In any event, as the Examiner indicated (A. 40-41), even if the dilatory conduct of the Company's attorney was not a bargaining tactic but an unintended consequence of his firm's heavy workload, the Company failed to discharge its bargaining obligation. See Section 8(d) of the Act. A delay in collective bargaining "entails more than mere postponement of an ordinary business transaction, for the passage of time itself, while employees grow disaffected and impatient at their designated bargaining agent's failure to report progress, weakens the unity and economic power of the group, and impairs the Union's ability to secure a beneficial contract. The Act . . . does not permit an employer to secure, even unintentionally, a dominant position at the bargaining table by means of unreasonable delay." *"M" System, Inc.*, 129 NLRB 527, 548-549 (1960); *Burgie Vinegar Co.*, 71 NLRB 829, 830 (1946). As the Court held in *N.L.R.B. v. Exchange Parts Co.*, 339 F.2d 829, 832-833 (C.A. 5, 1965), the duty to meet and confer with reasonable frequency is an affirmative obligation which exists apart from any deliberate effort on the part of the employer to undermine bargaining:

It is understandable that in a busy law practice some difficulty arises in giving as prompt consideration to the requests of a representative of the opposing side as would entirely satisfy the latter. Nevertheless, we conclude that the inherent difficulty arising when a lawyer in full practice represents the employer in bargaining sessions, does not exempt the employer from the normal requirements that nothing be done for the purpose of stifling an opportunity for discussion. There remains on the employer the positive legal duty to meet and confer with the Union at reasonable times and intervals.

Accord: N.L.R.B. v. Southland Cork Co., 342 F.2d 702, 704-705 (C.A. 4, 1965).

There was other evidence that the Company did not "enter into discussions with an open and fair mind, and a sincere purpose to find a basis of agreement" (*Tex Tan Welhausen Co. v. N.L.R.B.*, ___ F.2d ___, 72 LRRM 2885, 2888, (C.A. 5, decided November 21, 1969). Thus, although the Company told the Union at the November 28 meeting that certain of the Union's proposals were acceptable, the Company came to the December 19 meeting with a contract proposal which modified some of the provisions tentatively agreed upon, and simply ignored or eliminated others. This kind of unresponsiveness itself suggests that the Company was not really seeking a common ground for agreement.

From a substantive standpoint, moreover, the Company's proposal was so disadvantageous to the employees as to call into question the Company's willingness to sign any agreement. As the Examiner aptly observed (A. 41), the Company "proposed and insisted throughout the negotiations that the Union accept contract clauses which drastically curtailed the Union's representation rights."

Thus Article II A of its proposed contract, titled "Management Rights," vested in the Company, "not subject to arbitration," the right to establish, abolish or change jobs; to change materials, products, processes, and equipment; to subcontract or discontinue operations; and, "subject to the provisions of this agreement," the right to schedule and assign work, to recall laid-off employees, and to demote, suspend, discipline, or discharge employees. Article II B further reserved to the Company, without recourse to arbitration, "any and all management rights, prerogatives and privileges" not "specifically limited" by the contract. Article VII E, Grievances, excluded from the grievance procedure "Company prerogatives and reserved rights of management." Article VIII, Arbitration, similarly excluded reserved management rights from arbitration. The Company coupled these provisions with a stringent no-strike clause and throughout negotiations insisted upon the

voluntary arbitration of grievances. *Supra*, p. 7. Finally, under Article XII, Contract Constitutes Entire Agreement of Parties, the contract settled "all matters of collective bargaining for and during its term" and the parties waived their right to bargain on matters not covered by the contract "even though such subjects or matters may not have been within the knowledge or contemplation of either or both parties at the time they negotiated or signed this Agreement." (A. 98-108).

Since the Company included in its proposals no improvements in existing conditions of employment which might compensate the employees for this sweeping relinquishment by the Union of their right to representation, its proffered contract was one which the Union could not possibly justify to the employees and hence frustrated rather than furthered collective bargaining. As the Examiner observed (A. 43), "the Company never significantly retreated from its initial bargaining position, so making negotiations an exercise in futility, for without the Company's proposed contract the Union at least retained unimpaired its statutory right to advance consultation and bargaining before the Company could effect changes in the employees' [conditions of employment]."

The contract proposal stated that wages were "to be negotiated." At the December 19, 1966, meeting, the Company initially rejected the Union's wage demands in their entirety on the ground that its wage rates were equal to or better than those in the Jacksonville area. Allegedly based on a new area survey, the Company, on January 25, 1967, offered to increase the wages of several skilled job classifications to keep them in line with rates for comparable classifications in the area and, on February 7, it offered to increase shift differentials by 2 cents and to give a general wage increase of 8 cents. However, the Company thereafter refused to supply the Union with area wage survey data, assertedly relied upon by the Company, until some eleven weeks after the Union's initial request, although a

Company letter introduced into evidence shows, as the Board found (A. 58), that such data was readily available some two months before it was transmitted to the Union. At the same time, the Company flatly refused to supply the Union, upon request, with the names, job classifications, and wage rates of current bargaining unit employees — matters plainly relevant to bargaining.

As this Court observed in *Local 833, UAW v. N.L.R.B.*, 112 App. D.C. 107, 300 F.2d 699, 700 (C.A. D.C. 1962), cert. denied, 370 U.S. 911, a “determination of good faith or want of good faith normally can rest only on an inference based upon more or less persuasive manifestations of another’s state of mind. The previous relations of the parties, antecedent events explaining behavior at the bargaining table, and the course of negotiations constitute the raw facts for reaching such a determination.” (Quoting from Frankfurter, J., concurring in *N.L.R.B. v. Truitt Mfg. Co.*, 351 U.S. 149, 155 (1956)). In light of all of the foregoing facts, the Board could reasonably find, as it did, that the Company “made no meaningful concessions on any major issue and that its wage offers and other concessions made ‘here and there’ amounted to no more than ‘surface bargaining’ and were part of ‘a purposeful strategy to make bargaining futile or fail’ ” (*N.L.R.B. v. Herman Sausage Co.*, *supra*, 275 F.2d at 231-232 (C.A. 5)).

C. The Company’s withholding of wage and related information was itself an unfair labor practice.

“There can be no question,” the Supreme Court has observed, “of the general obligation of an employer to provide information that is needed by the bargaining representative [of his employees] for the proper performance of its duties.” *N.L.R.B. v. Acme Industrial Co.*, 385 U.S. 432, 432-436 (1967). Deriving as it does from a union’s responsibilities as exclusive

representative of all unit employees, the employer's duty of disclosure is commensurate with those responsibilities. Accordingly, the employer has a duty to supply such information not only in connection with the processing of grievances, but also during the course of contract negotiations. *N.L.R.B. v. Acme Industrial Co.*, *supra*, 385 U.S. at 436; *Waycross Sportswear, Inc. v. N.L.R.B.*, 403 F.2d 832 (C.A. 5, 1968).

It has been "repeatedly held," for example, "that employee representatives are entitled to wage information and related data in order to effectively negotiate over the rate of compensation." *N.L.R.B. v. Frontier Homes Corporation*, 371 F.2d 974, 978 (C.A. 8, 1967). Accord: *Timken Roller Bearing Company v. N.L.R.B.*, 325 F.2d 746, 750 (C.A. 6, 1963); cert. den., 376 U.S. 971; *N.L.R.B. v. Fitzgerald Mills Corporation*, 313 F.2d 260, 265 (C.A. 2, 1963); *Curtiss-Wright Corporation v. N.L.R.B.*, 347 F.2d 61, 68 (C.A. 3, 1965). Indeed, "because of the need to facilitate effective collective bargaining, a refusal to furnish [such] data is an unfair labor practice notwithstanding the good faith of an employer in rejecting the request." *Curtiss-Wright Corp. v. N.L.R.B.*, *supra*, 347 F.2d at 68. Accord: *N.L.R.B. v. Celotex Corp.*, 364 F.2d 552, 554 (C.A. 5, 1966), cert. den., 385 U.S. 987.

In light of these principles, the Company's failure to comply promptly with the Union's request for the area wage survey information upon which the Company assertedly based its bargaining position in part, was a clear violation of Section 8(a)(5) of the Act. The Union had requested this information in writing on May 31, 1967. It was available to the Company no later than June 12, but not supplied until August 15, despite follow-up requests by the Union on July 27 and August 6. The Board could properly find, as a matter of law, that "the 2 months delay in transmitting such information was unreasonable * * *" (A. 58). Cf. *N.L.R.B. v. May Aluminum, Inc.*, 398 F.2d 47, 51 (C.A. 5, 1968) (two-month delay); *General Electric*

Co. v. N.L.R.B., 414 F.2d 918, 924-925 (C.A. 4, 1969), cert. denied, ____ U.S. ____ (refusal to supply area wage survey data).

Similarly unlawful was the Company's flat refusal to comply with the Union's request for the wage rates, job classifications and names of employees working during the strike period.¹⁴ The Union was clearly entitled to this information. *N.L.R.B. v. F. W. Woolworth Co.*, 352 U.S. 936 (1956), reversing *per curiam*, 235 F.2d 319 (C.A. 9); *International Woodworkers of America, Local Unions 6-7 and 6-122 v. N.L.R.B.*, 105 App. D.C. 37, 263 F.2d 483, 484-485 (1959), enforcing *Pine Industrial Relations Committee, Inc.*, 118 NLRB 1055, 1056-1059 (1957); *N.L.R.B. v. May Aluminum, Inc.*, *supra*, 398 F.2d at 51. Although the Company refused to supply it for the asserted reason that striker replacements had been subjected to "violence and intimidation," the Board reasonably ruled that "mere assertions of the Company's position [do] not constitute affirmative proof of harassment" and that absent "positive evidence of employee harassment" the Union did not lose its right to such plainly relevant information.^{14a}

D. The unilateral wage increase on October 2 was also unlawful

The last bargaining session was held on August 7, after the conclusion of the strike. No agreement was reached at that meeting. About a month later, the Company removed from its bulletin board a notice station that it would be "unlawful" to give wage increases. On October 2, assertedly

¹⁴ In reversing the Trial Examiner's finding that the Company had given a sufficient explanation for its refusal to supply this wage information, the Board simply reached a different conclusion on established facts. This was, of course, the Board's prerogative. *Oil, Chemical and Atomic Workers International Union, Local 3-89 v. N.L.R.B.*, ____ App. D.C. ____, 405 F.2d 1111, 1116 (1968).

^{14a} In his testimony, Union representative Edwards briefly alluded to picket line misconduct of an unspecified nature (A. 500). This does not, we submit, constitute affirmative proof warranting the Company's blanket refusal to supply this wage information.

because of a "competitive disadvantage in the local labor market," but without the consulting or notifying the Union, the Company put into effect the wage increases it had proposed at the bargaining table, *Supra*, p. 15.

As the Supreme Court has held, "Unilateral action by an employer without prior discussion with the union does amount to a refusal to negotiate about the affected conditions of employment under negotiation, and must of necessity obstruct bargaining, contrary to the congressional policy. It will often disclose an unwillingness to agree with the union. It will rarely be justified by any reason of substance." *N.L.R.B. v. Katz*, 369 U.S. 736, 747 (1962). Before the Board, the Company sought to justify its unilateral action on the ground that the parties had bargained to an "impasse." As we have shown, however, the Company's negotiations with the Union had been carried on in bad faith, and "it is manifest that there can be no legally cognizable impasse, i.e., a deadlock in negotiations which justifies unilateral action, if a cause of the deadlock is the failure of one of the parties to bargain in good faith." *Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO v. N.L.R.B.*, 320 F.2d 615, 621 (C.A. 3, 1963), cert. denied, 375 U.S. 984.

In light of the Company's overall bad-faith approach to bargaining, and particularly its failure to supply the Union with wage information necessary to evaluate the Company's position, the Board properly found (A. 45) that the Company's unilateral wage increase on October 2 was also an unfair labor practice; indeed, such action was further calculated to undermine the Union's position as bargaining agent, in violation of Section 8(a)(5) and (1) of the Act. Cf. *Industrial Union, supra*, 320 F.2d at 617, 620-622.

II. SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD SUPPORTS THE BOARD'S FINDINGS THAT THE COMPANY VIOLATED SECTION 8(a)(3) AND (1) OF THE ACT BY DISCHARGING AND REFUSING TO REINSTATE UNFAIR LABOR PRACTICE STRIKERS UPON THEIR UNCONDITIONAL OFFER TO RETURN TO WORK.

At the end of February 1967, the Union filed Section 8(a)(5) charges with the Board and the employees went out on strike to protest the Company's failure to bargain in good faith (A. 492-493, 127). It is well settled, of course, that a walkout in protest over employer violations of the Act is an unfair labor practice strike and that, on its termination, the strikers are entitled to full reinstatement regardless of whether replacements have been hired to take their jobs. *Mastro Plastics Corp. v. N.L.R.B.*, 350 U.S. 270, 278 (1956); *United Steelworkers of America, AFL-CIO, Local 5571 v. N.L.R.B.*, ____ App. D.C. ____, 401 F.2d 434, 438 (1968), cert. den., 395 U.S. 946; *Kohler Co. v. N.L.R.B.* 120 U.S. App. D.C. 259, 345 F.2d 748, 749 (1965), cert. denied, 382 U.S. 836; *Shattuck Denn Mining Corp. v. N.L.R.B.*, 362 F.2d 466, 471 (C.A. 9, 1966); *N.L.R.B. v. Sea-Land Service, Inc.*, 356 F.2d 955, 966 (C.A. 1, 1966), cert. denied, 385 U.S. 900.

The record shows that some two weeks after the strike began, the Company sent letters to approximately 160 striking employees advising them that they had been permanently replaced and were terminated. This purported discharge of unfair labor practice strikers who had been replaced was itself violative of Section 8(a)(3) and (1) of the Act. *N.L.R.B. v. Farrell Co., Inc.*, 360 F.2d 205, 208 (C.A. 2, 1966). Accord: *Mastro Plastics Corp. v. N.L.R.B.*, *supra*, 350 U.S. at 278 (1956); *N.L.R.B. v. Comfort, Inc.*, 365 F.2d 867, 874 (C.A. 8, 1966). The Company also told strikers who individually applied for reinstatement that they would have to apply for work as new employees. Finally, when the Union unconditionally applied for reinstatement on behalf of all striking employees on July 9, 1967,

the Company, although offering employment in some cases, refused to reinstate any striking employee to his former position, insisting that each striker apply as a new employee. As unfair labor practice strikers, these employees were entitled to prompt and full reinstatement to their former positions; and the Company's refusal to do this violated Section 8(a)(3) and (1) of the Act. *Mastro Plastics Corp. v. N.L.R.B.*, *supra*, 350 U.S. at 278; and cases cited *supra*, p. 29.

III. SUBSTANTIAL EVIDENCE ON THE RECORD AS A WHOLE
SUPPORTS THE BOARD'S FINDING THAT THE COMPANY
UNLAWFULLY PROMISED BENEFITS TO EMPLOYEES IN
RETURN FOR THEIR NOT SUPPORTING THE STRIKE

As shown *supra*, p. 11, Superintendent Peacock told two employees, shortly after the strike began, that he appreciated their staying on the job and would give them a dime raise. That same night, according to other credited testimony, Peacock told four or five employees that "the guys who remain in the plant after the other guys walked out, would receive a ten cent raise on the hour" (A. 371). The Act, of course, prohibits an employer from promising benefits to employees in order to discourage them from engaging in protected activity. *Joy Silk Mills v. N.L.R.B.*, 87 App. D.C. 360, 185 F.2d 732, 739 (1950), cert. denied, 341 U.S. 914. As the Examiner found (A. 46), the superintendent's remarks plainly constituted unlawful interference with the employee's right to strike. Cf. *N.L.R.B. v. Shurett*, 314 F.2d 43, 44 (C.A. 5, 1963); *N.L.R.B. v. Fotochrome, Inc.*, 343 F.2d 631, 634 (C.A. 2, 1965), cert. denied, 382 U.S. 833.

IV. THE BOARD'S ORDER IS PROPER

The Union asserts that the Board should have awarded backpay to most of the strikers for the period beginning March 16 and 17, 1967, when the Company notified these strikers that they had been replaced and were therefore terminated. This Court has recognized, however, that "the Board's power to fashion remedies places a premium upon agency expertise and experience, and the broad discretion involved is for the agency and not the court to exercise." *United Steelworkers of America, AFL-CIO, Local 5571 v. N.L.R.B.*, *supra*, ____ App. D.C. ____, 401 F.2d at 438; *Amalgamated Clothing Workers of America v. N.L.R.B.*, 125 App. D.C. 275, 281, 371 F.2d 740, 746 (1966). See also *Office & Professional Employees Intl. Union v. N.L.R.B.*, ____ App. D.C. ____, 70 LRRM 3047, 3053 (1969); *United Hatters v. N.L.R.B.*, 126 App. D.C. 149, 151-152, 375 F.2d 325, 327-328 (1967). Consequently, "It is for the Board, not the Courts, to determine how the effect of prior unfair labor practices may be expunged." *International Assn. of Machinists v. N.L.R.B.*, 311 U.S. 72, 82 (1940); *Fiberboard Paper Products Corp. v. N.L.R.B.*, 379 U.S. 203, 216 (1964). Accord: *Consolo v. Federal Maritime Commission*, 383 U.S. 607, 621 (1966).

The Board has long held that unfair labor practice strikers are entitled to backpay only from the date they request reinstatement.¹⁵ Union demands for backpay at some point in time antecedent to that event has

¹⁵ "To award backpay to such strikers [who had not applied for reinstatement], no matter how flagrant an employer's unfair labor practices might be, would, in our opinion, not only encourage, but also place a premium upon resort by employees to industrial strife and the interruption of commerce in order to obtain redress of wrongs, rather than promote recourse to the orderly administrative process established by the Act." *Volney Felt Mills, Inc.*, 70 NLRB 908, 910 (1946).

been consistently refused by the Board, and such refusal has been approved by this Court. See *United Steelworkers of America, AFL-CIO, Local 5571 v. N.L.R.B.*, *supra*, ____ App. D.C. ____, 401 F.2d at 438 (order sought by union requiring backpay to run from date unfair labor practice strikers were replaced by employer); *Louisville Typographical Union No. 10, ITU v. N.L.R.B.*, 67 LRRM 2462 (C.A. D.C.), decided *per curiam*, December 22, 1967 (order sought requiring backpay to run from inception of unfair labor practice strike); *Food Store Employees Union, Local 347 v. N.L.R.B.*, ____ App. D.C. ____, 413 F.2d 407 (1969) (same). Moreover, the Board's position that strikers — including unfair labor practice strikers — who are discharged during the course of the strike must abandon the strike before they are entitled to backpay, has specifically been approved by the courts. *Golay & Co., Inc. v. N.L.R.B.*, 371 F.2d 259, 263 (C.A. 7, 1966), cert. denied, 387 U.S. 944; *N.L.R.B. v. Globe Wireless Co.*, 193 F.2d 748, 752 (C.A. 9, 1951); *N.L.R.B. v. Leach*, 234 F.2d 400, 401 (C.A. 3, 1956); Cf. *N.L.R.B. v. Comfort, Inc.*, 365 F.2d 867, 877-878 (C.A. 8, 1966). See also, *Sea-Way Distributing, Inc.*, 143 NLRB 460 (1963); *M.R. & R. Trucking Co.*, 178 NLRB No. 35, slip. decision 20, n. 35, (1969) (three copies of this decision have been lodged with the Court); *Baldwin County Electric Membership Corp.*, 145 NLRB 1316, 1319 (1964).

The Union contends that the strikers here were necessarily discouraged from applying for reinstatement when they were told by their employer that they had been discharged. This contention is without merit. These employees had authorized the Union to call the strike, and had elected to withhold their services in support of it. Having assumed the status of strikers under the Union's leadership, and having remained on strike throughout the pre-discharge period, strikers who did not return to work in the post-discharge period presumably failed to do so because of their continued support of the strike, absent evidence of a change of heart.

Since loss of wages during this period was the result of their own withholding of services, and was not the product of the unlawful discharges themselves, these employees are no more entitled to backpay for the period they remained on strike than are strikers generally.

For these reasons, the Board's policy of awarding backpay only upon an affirmative showing that a discharged striker has prematurely abandoned the strike, is a reasonable exercise of the Board's "discretion under Section 10(c) to order reinstatement with or without backpay 'as will effectuate the policies' of the Act under the circumstances of a particular case" (*Golay, supra*, 371 F.2d at 263). The individual employee may, of course, abandon the strike at any time prior to its termination, and if the employee is an unfair labor practice striker, or an economic striker who has not been replaced, he is entitled to backpay if the employer does not promptly reinstate him. Several employees individually abandoned the strike in the instant case, and the Board's order awards backpay to these employees from the date of the employer's refusal to reinstate them. As to the remaining strikers, however, the Board properly tolled backpay until the Union itself abandoned the strike and requested reinstatement on their behalf. *Golay, supra*, 371 F.2d 263.

In short, it "cannot [be said] that the traditional relief provided here will be so ineffective to enforce the policies of the Act as to be insufficient as a matter of law." *United Steelworkers of America, AFL-CIO, Local 5571 v. N.L.R.B., supra*, ____ App. D.C. ____, 401 F.2d at 438.

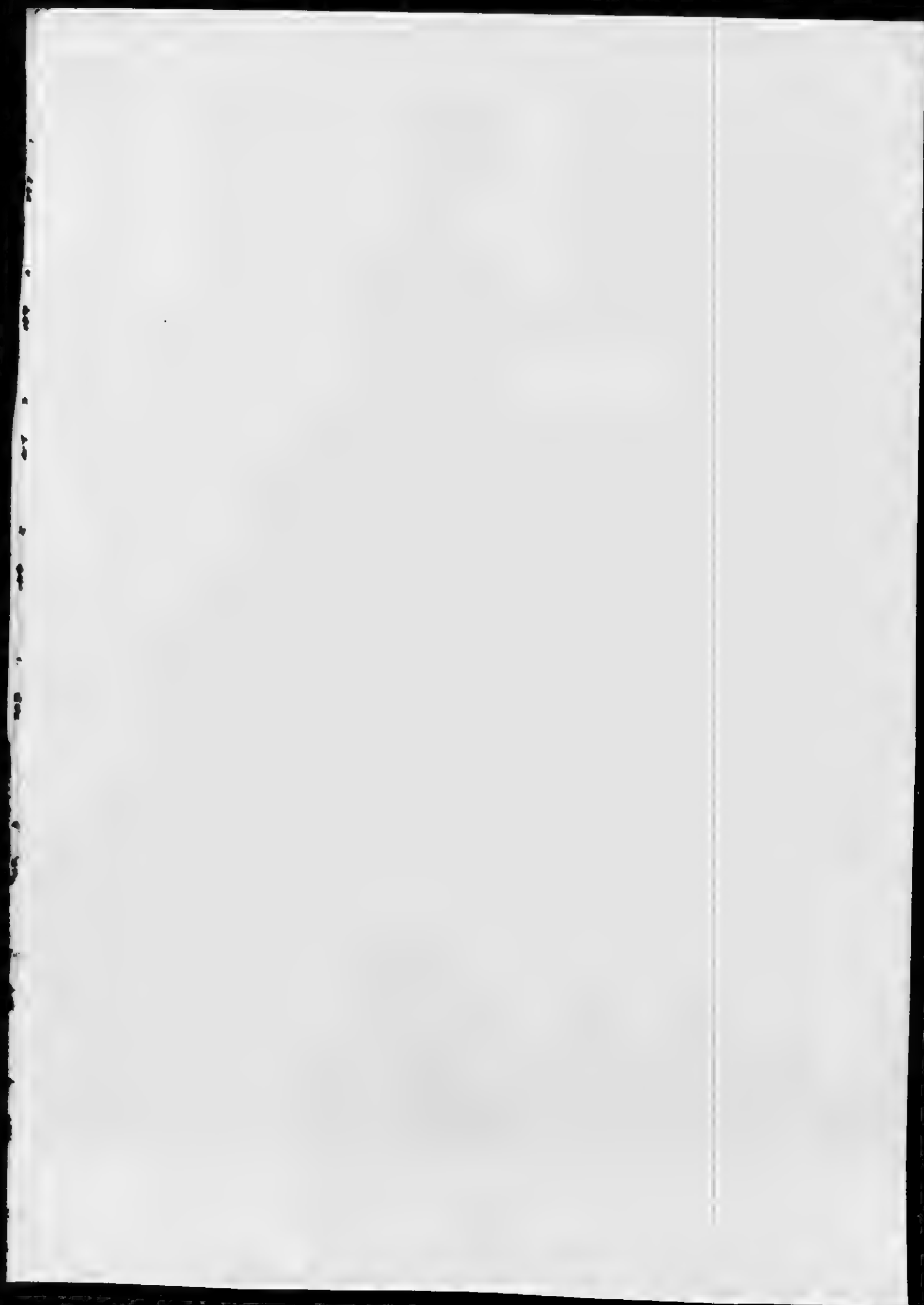
CONCLUSION

For the foregoing reasons, we respectfully submit that a decree should issue denying the Union's petition for review in No. 22,872, and granting enforcement of the Board's order¹⁶ in No. 23,010.

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March 1970.

¹⁶ Although the Company asserted before the Board that a broad cease and desist order, restraining the Company from "in any other manner" violating its employees' Section 7 rights, is unwarranted in this case, such an order is appropriate where, as here, the employer's conduct evinces a predisposition to violate employee rights on a broad front. See *N.L.R.B. v. Express Publishing Co.*, 312 U.S. 426, 437-438 (1941); *N.L.R.B. v. Southern Transport, Inc.*, 343 F.2d 558, 560-561 (C.A. 8, 1965); *N.L.R.B. v. Continental Oil Co.*, 179 F.2d 552, 555-556 (C.A. 10, 1950). Where such an unlawful purpose is shown, "* * * it is not necessary that all of the untravelled roads to that end be left open and that only the worn one be closed." *Electrical Workers v. N.L.R.B.*, 341 U.S. 694, 706 (1951).



BRIEF FOR RESPONDENT
FLORIDA MACHINE & FOUNDRY COMPANY AND
FLECO CORPORATION IN NO. 23319

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,372

UNITED STEELWORKERS OF AMERICA, AFL-CIO, *Petitioner,*

NATIONAL LABOR RELATIONS BOARD, *Respondent*

No. 23,010

NATIONAL LABOR RELATIONS BOARD, *Petitioner,*

FLORIDA MACHINE & FOUNDRY COMPANY AND
FLECO CORPORATION, *Respondent.*

On Petition for Review and Application for Enforcement of an
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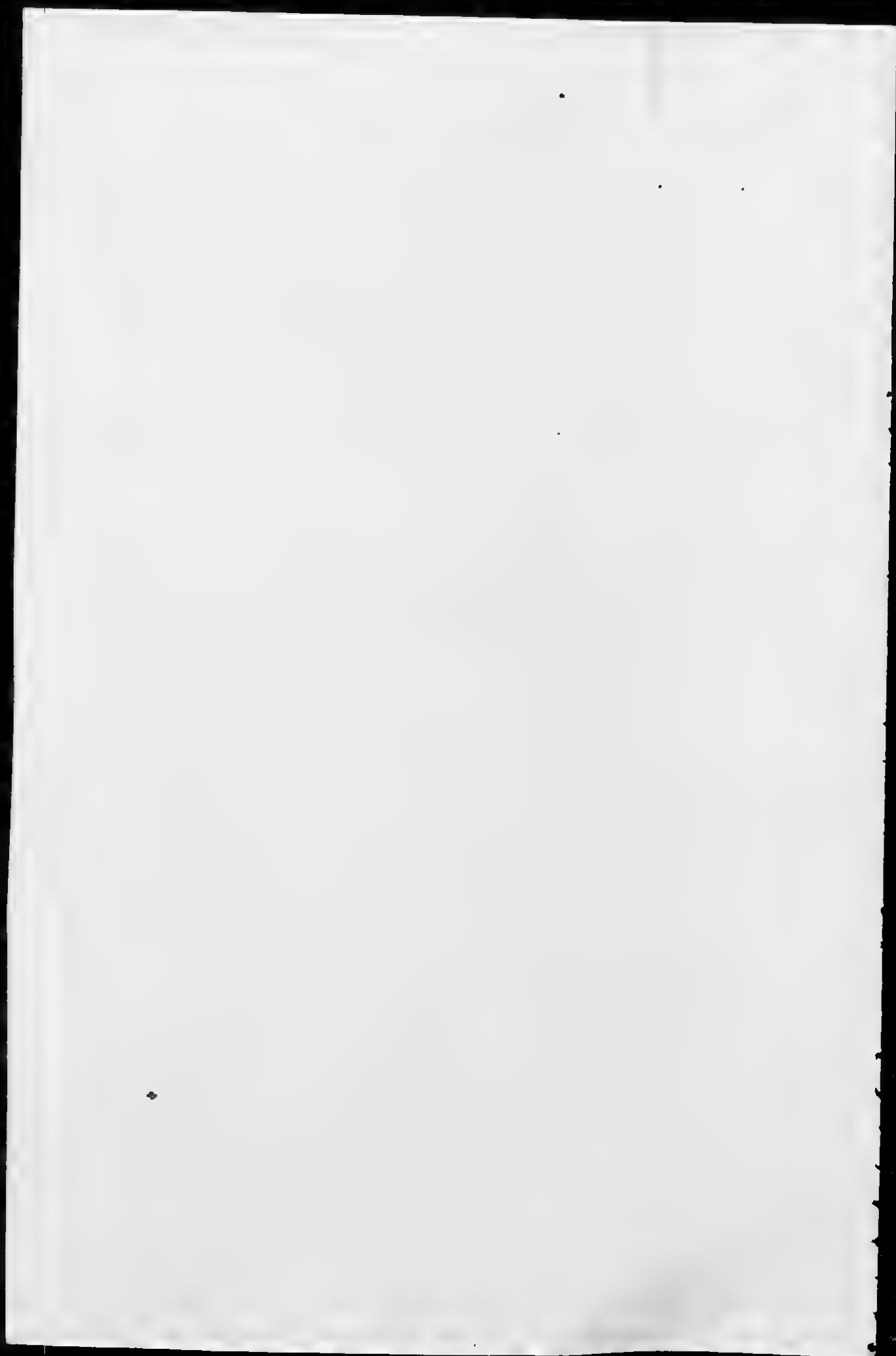
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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,872

UNITED STEELWORKERS OF AMERICA, AFL-CIO, *Petitioner*,
v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

No. 23,010

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,
v.

FLORIDA MACHINE & FOUNDRY COMPANY AND
FLECO CORPORATION, *Respondent*.

On Petition for Review and Application for Enforcement of an
Order of the National Labor Relations Board

BRIEF FOR RESPONDENT
FLORIDA MACHINE & FOUNDRY COMPANY AND
FLECO CORPORATION IN NO. 23010

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the Board erred in finding that the Company violated Section 8(a)(5) and (1) of the Act by allegedly failing and refusing to bargain in good faith with the Union on and after November 28, 1966.

2. Whether the Board erred in relying on evidence of unfair labor practices allegedly engaged in by the Company prior to the six months statute of limitation period, specified in Section 10(b) of the Act in order to find an

unlawful refusal to bargain in good faith within the period six months prior to filing the charge.

3. Whether the Board erred in finding that the alleged refusal to bargain in good faith with the Union on and after November 28, 1966 caused the strike of February 28, 1967.

4. Whether the Board erred in finding that the Company violated Section 8(a)(3) and (1) of the Act by allegedly replacing certain persons who went on strike and failing to discharge replacements to make room to rehire strikers seeking reinstatement.

5. Whether the Board erred in finding that the Company violated Section 8(a)(5) and (1) of the Act by allegedly refusing to supply the Union with the names and classifications of, and a schedule of wages paid to, employees after the strike began, and by refusing to comply with the Union's request for area wage survey information within a reasonable time.

6. Whether the Board erred in finding that the Company violated Section 8(a)(5) and (1) of the Act by allegedly unilaterally increasing wages on October 2, 1967.

7. Whether the Board erred in finding that the Company violated Section 8(a)(1) of the Act by allegedly promising wage increases to induce employees not to engage in protected strike activity.

COUNTERSTATEMENT OF CASE

1. NATURE OF CASE

At its core this is a case charging a violation of the Company's obligation to bargain in good faith with the Union by reason of its alleged "surface bargaining" with the Union and failure to make "meaningful concessions" to the Union on any "major issue" (App. 44).¹

¹ References to the Appendix will be cited as "App." and the page number.

The Board concluded, in agreement with the Trial Examiner, that the evidence supported this charge (App. 56-61). The Board also concluded, as did the Trial Examiner, that the strike commencing on February 28, 1967 was caused by this alleged violation of Section 8(a)(5) of the Act, and, therefore, that all strikers applying for reinstatement after the strike had to be rehired with "back pay", even if that meant discharging striker-replacements.² The validity of the reinstatement with back pay order, therefore, rests entirely on the issues of (1) whether the Company violated the Act by allegedly engaging in "surface bargaining" and allegedly failing to make "meaningful concessions," and (2) whether the alleged refusal to bargain in good faith caused the strike.

The Board found three other unfair labor practices, which will be discussed in this brief, but they lack the significance of the central finding of alleged "surface bargaining" because they were found *not* to have caused or prolonged the strike of February 28, 1967 and, thus, cannot form the basis for the order of reinstatement and backpay. These subsidiary findings were that:

1. The Company failed and refused to give, or delayed giving, the Union information relating to (a) names, classifications and wages paid employees after the strike and (b) area wage survey data.

2. The Company in violation of Section 8(a)(1) of the Act promised employees wage increases if they would refrain from joining the strike.

3. The Company granted unilateral wage increases on October 2, 1967. As admitted by the Board in its brief,

² The critical difference between a strike caused by an employer's unfair labor practices and one caused by simple failure to agree in the terms of an agreement ("economic strike") is that in the former case all strikers seeking unconditional reinstatement after the strike must be rehired, even if striker-replacements must be discharged, whereas in an economic strike strikers who seek reinstatement need not be rehired if they have been permanently replaced. *NLRB v. Mackay Radio & Telegraph Co.*, 304 U.S. 333 (1938); *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270 (1956).

however, the validity of this finding rests on the validity or invalidity of its finding that the Company's conduct in the negotiations was unlawful (Bd. Br., p. 28). If the bargaining was lawful, there was an impasse on the subject of wages, permitting the employer to take unilateral action.

2. COUNTER STATEMENT OF FACTS

As can be readily seen from the brief exposition of the nature of the case given above, the key to the entire case is the bargaining.

A.

Bargaining Meetings

The Company and the Union met on eleven occasions—eight before the strike of February 28, 1967 and three after the strike—in an effort to arrive at an agreement. These meetings were on October 27, November 28, December 19, 1966, January 6, 25, February 7, 13, 22, March 14, May 1, and August 7, 1967.

This was an "initial contract" situation since the Union had been certified as the collective bargaining agent only on October 3, 1966. Just after the certification, the Union on October 10, 1966 sent its proposed contract to the Company (App., pp. 77-97; 403).

The first meeting was scheduled for October 27, 1966, but had to be adjourned because of the failure of the Union representatives to show up for such meeting (App. 147).

The next meeting was scheduled for over a month later—November 28, 1966. The record discloses no objection by the Union to the delay between October 27 and November 28, 1966. At the November 28 meeting the Union went over its initial proposal (App. 419), and requested information from the Company regarding (1) a list of employees with classifications, dates of employment, rates

of pay, department, age and number of dependents and (2) a copy of the pension and insurance plans (App. 147-148).

The Union testimony was that at the November 28 meeting the Company agreed in principle, or at least had no objection in principle, to the following provisions of the Union proposal:

1. The recognition clause (App. 420).
2. An "indication" of agreement on a 60-day probationary period (App. 420).
3. The Union responsibilities clause (App. 420).
4. A provision in the overtime clause disclaiming that it was a guarantee of hours of work per day (App. 421).
5. The language of the holiday clause, but not the number of holidays (App. 421).
6. A provision in the vacation article that vacations should not accrue from year to year (App. 421).
7. A provision in the vacation article that employees who worked during their vacation would receive vacation pay and regular pay for time worked (App. 421-422).
8. The discharge article, providing for submission of discharge to the grievance procedure and the reinstatement without prejudice of any employee unjustly discharged or suspended (App. 422).
9. The article providing for Union bulletin boards (App. 422).
10. Partial agreement on a leave of absence clause (App. 422).

At the conclusion of the meeting it was agreed that the Company would prepare a counterproposal in writing (App. 423).

Twenty-one days after this meeting the parties met again on December 19, 1966. During this interval the

Company had prepared a counterproposal in writing and responded fully to the Union's request for information regarding the employees and the pension and insurance plans.³ At this meeting the principal Union negotiator at the previous meeting—Edwards—was not even present, and his position was taken by one McCall (App. 149). At the outset of this meeting the Company gave the Union the information it requested and also a written counterproposal (App. 98-116).

After the Union took a break to study the Company's counterproposal, McCall began his analysis of the proposal with the calculatedly abusive and inflammatory observation that it was similar to those he had seen in the auto industry in the 1930's (App. 149, 427). Having thus set the stage, McCall went through the Company proposal, rejecting in whole or in part or deferring comment on all but the provisions permitting the Union the use of bulletin boards, the provision for military leave, and the provision which the Company agreed to furnish washing facilities (App. 153-154; 437-438).

At the conclusion of this meeting and the first mutual review of each side's opening proposals, the following important areas of disagreement emerged:

1. *Arbitration*

Union position—Compulsory arbitration by outside arbitrator of all unresolved grievances.

Company position—Permissive arbitration upon mutual agreement, with a provision for parties to rely on economic power (strike or lockout) if the other party refused to submit a grievance to arbitration.

³ There was testimony from the Union representative that he urged an earlier date for a meeting than December 19, 1966 (App. 423). The record fails, however, to show why urgency became a Union priority only on November 28 after it had failed utterly to attend a meeting on October 27, 1966 and had made no effort to meet before November 28, 1966.

2. *No-Strike Clause*

Union position—General provision against union calling, authorizing or sanctioning a strike during the agreement.

Company position—More specific provision against permitting a strike and provision for immediate judicial redress of violation.

3. *Management Rights*

Union position—Would agree only to brief and general clause.

Company position—A broad and inclusive clause not subject to arbitration.

4. *Seniority*

Union position—Plant-wide seniority; superseniority for local union officers; posting of job vacancies; filling of vacancy by senior employee bidding and provision for five-day period in which senior employee would become familiar with job.

Company position—Departmental seniority; 90-day probationary period; ability as judged by Company to be the primary factor in promotions, rehires and transfers, but seniority to govern where relative ability is equal; no superseniority for local union officials.

5. *Checkoff*

Union position—Dues checkoff provision in contract.

Company position—No dues checkoff provision.

6. *Company Rules*

Union position—Company rules should not be made part of contract.

Company position—Company rules should be expressly incorporated into contract.

7. "Zipper" clause

Union position—No clause in contract reciting that the agreement is the full agreement of the parties and waiving further negotiations during its term.

Company position—Inclusion of such clause.

8. Physical Exams

Union position—Physical exams (other than pre-hire exams) to be required only after illness and layoff.

Company position—Physical exams may be required at any time; penalty of suspension for noncompliance.

9. Overtime

Union position—Time and one half for all hours worked over 40 in any week and all time in excess of 8 in any day; equal distribution of overtime.

Company position—Time and one half for all hours over 40 in any week, but no daily overtime or equal distribution of overtime.

10. Vacations

Union position—To be eligible for vacation employee must have worked a minimum of 1500 hours in preceding year; schedule of 1 year—one week, 2 years—two weeks, 4 years—3 weeks, and 10 years—4 weeks.

Company position—To be eligible for vacation employee must have worked a minimum of 1800 hours in preceding year; schedule of 1 year—1 week, 5 years—2 weeks, 10 years—3 weeks.

11. Holidays

Union position—9 paid holidays.

Company position—6 paid holidays.

12. *Reporting Pay*

Union position—Pay for four hours for employee who reports for work when no work is available if he has not been notified on previous day.

Company position—2 hours reporting pay.

13. *Insurance*

Union position—Daily rate, surgical schedule and life insurance should be increased in an unspecified amount.⁴

Company position—Current plan with \$9.00 daily rate.

14. *Rates of Pay*

Union position—Across-the-board increase of \$.22 per hour for one year contract.⁵

Company position—No immediate offer of wage increase made.

15. *Shift Differential*

Union position—4:00 p.m. shift—10¢; 8:00 p.m. shift—12¢; 11:30 shift—15¢.

Company position—Current shift differential of: 4:00 p.m. shift—5¢; 8:00 p.m. shift—8¢; 11:30 p.m. shift—10¢.

As is normal in any first contract situation, there were other more minor areas of disagreement.

At the conclusion of the December 19, 1966 meeting, the Union negotiator testified that he pressed the Com-

⁴ This position was later refined in the February 7, 1969 session to mean a daily hospital rate of \$20.00, \$45.00 per week sickness and accident, \$450.00 maximum surgical and \$5000.00 life insurance (pp. 168-169).

⁵ Originally the Union had proposed a detailed wage schedule covering the various classifications (App. 85-86), but on February 7, 1967, this demand was reduced to an across-the-board 22¢ per hour demand (App. 170).

pany's attorney and chief negotiator Bowden for a date for another meeting; that Mr. Bowden said he would have to check his calendar; that McCall gave Bowden his room number and phone at the Holiday Inn; that when Bowden did not return his call he called Bowden's home and was told by Bowden's daughter that he was at a meeting of the Quarterback Club;⁶ that McCall left a message, but received no reply; and finally that when McCall called Bowden again, Bowden requested that negotiations be put over past the holiday period (App. 439-441).

The next meeting was held on January 6, 1967, barely 18 days after the previous meeting in which the parties were in substantial disagreement on the areas enumerated above, and in which neither side indicated that a few rapidly scheduled bargaining sessions could produce a quick breakthrough.

At the meeting held on January 6, 1967, both Messrs. McCall and Edwards appeared for the Union, with McCall taking the leading role.

Although the parties spent the entire day in negotiations and discussed most of the areas in dispute, there was relatively little movement by either party. The concessions made by the Company at this session included:

1. *Seniority*—Company agreed to Union proposal against accumulating seniority in non-bargaining unit jobs; provision for laid-off employees to keep addresses current; and cut-off period within which persons must return. Also, a 60-day probationary period was agreed to, representing a compromise between the 90 and 30 day proposals (App. 434).

⁶ McCall stood by his testimony—though somewhat less confidently—when it was suggested to him that Bowden's only daughter was at college at the time of the alleged call and that meetings of the Quarterback Club ended in November (App. 463-464).

2. *Checkoff*—The Company told the Union that a check-off clause “would not bar us from getting a contract” (App. 431).

3. *Vacations*—The Company reduced its eligibility proposal from 1800 hours in the preceding year to 1700 hours (App. 158).

The only concessions made by the Union were its agreement that seniority should operate on a departmental rather than plant-wide basis (App. 156).

The next meeting scheduled was for January 25, 1967, nineteen days after the session on January 6, 1967.

At the January 25, 1969 session (which was to a large extent devoted to an exposition of the insurance problems) the Company made the following concessions:

1. *Grievance Procedure*—The Company agreed to the Union’s revised grievance procedure (App. 163, 124-126; 458).

2. *Wage Rates*—The Company agreed to increase the top rate for four job classifications from \$.12 to \$.27 per hour, depending on the classification (App. 165, 170, 456).

3. *Insurance*—Company proposed an increase in the daily hospitalization rate from \$9.00 per day to \$15.00 per day (App. 165-166; 457).

4. *Reporting Pay*—Company increased its proposal for reporting pay from two to three hours (App. 166).

At this meeting the Union submitted its revised grievance clause, which was accepted by the Company, and its revised seniority clause, which was accepted in principle by the Company (App. 479-480).

The next meeting took place on February 7, 1967, just thirteen days following the previous one. This was the first meeting before the Federal mediator, and, as is normally the case, the meeting was largely taken up with ac-

quainting the mediator with the respective positions of the parties.

The company, however, made several significant concessions at this meeting. They included:

1. *Company Rules*—Company would agree to delete recitation of rules in contract if Union would agree to side letter agreeing that the established rules were reasonable. This was tied to the Company's position on arbitration (App. 171).

2. *Shift Differential*—Company agreed to increase differential on the shift starting at 4:00 p.m. from 5¢ to 7¢, on the shift starting at 8:00 p.m. from 8¢ to 10¢, and on the shift starting at 11:30 p.m. from 10¢ to 12¢ (App. 172). This compared with the Union's proposal of 10¢, 12¢ and 15¢ for such shift differentials (App. 81).

3. *Vacations*.—The Company again lowered its eligibility criterion for the year preceding the vacation to 1,650 hours (App. 172).

4. *Rates of Pay*—Company proposed that in addition to the individual rates it had agreed to for the four specified categories, all other employees be given an across-the-board increase of \$.08 per hour (App. 173).

5. *Reporting Pay*—The Company agreed to the Union's proposal of 4 hours reporting pay (App. 173).

In this session the Union indicated general agreement with the Company's management rights clause (but not its proposed exclusion from arbitration), proposed shift differentials of 8¢, 10¢ and 15¢, reduced its holiday demand to seven paid holidays, agreed on 1,650 hours eligibility for vacations (and providing 2 weeks vacation after 3 years instead of two years), and reduced its wage demand from 22¢ to 20¢ across-the-board (App. 167-179; 480-487).

The seventh bargaining session took place a week later on February 13, 1967. The two theretofore most active

union negotiators—Edwards and McCall—were inexplicably not present at this meeting (App. 179). There was little or no movement by either side at the bargaining session on the 13th. The Union withdrew its tentative agreement on February 6, 1967 to the Company's management rights and "zipper" clauses (App. 184-185). The parties spent the time restating their positions of the several issues still outstanding (App. 179-189).

The eighth meeting and the last one preceding the strike took place nine days later on February 22, 1967. Mr. Edwards did attend this meeting for the Union. There was little movement by either side at this meeting. The Union made no moves at all and the Company accepted, with certain modifications, a draft submitted by the Union on February 7 with respect to seniority, and accepted the Union's proposed proviso to the management rights clause prohibiting subcontracting for the purpose of discriminating against an employee by reason of his Union membership (App. 193-194).

The strike began on February 28, 1967. The first bargaining session after the commencement of the strike took place on March 14, 1967 and resulted in no concessions by either side. As is normal, the discussion centered largely around issues generated by the strike itself rather than bargaining issues (App. 196-200).

The next meeting took place on May 1, 1967. At this meeting the Union injected a new proposal that all striking employees would have to be rehired before any agreement was reached, and lowered its wage demand from 20¢ to 18¢ across-the-board (with the exception of the four higher paying job classifications on which the Company had made a higher offer) (App. 203-204). The Company did not change its position in any material respect.

The eleventh and final bargaining session was held on August 7, 1967, a month after the Union had abandoned the strike on July 10, 1967. At this session, which the

Union requested, the Union reiterated its demand for immediate reinstatement of all strikers. The Union also indicated its willingness to drop its "Intent and Purpose" clause, agreed to include the Company rules in the contract, provided that penalties for infractions were reduced, agreed to physical exams, provided that if an employee disagreed with the result he could get another medical opinion and have any difference of opinion resolved by a third mutually agreeable doctor, agreed to the present limit on life insurance, provided the Company would pick up the entire cost of the program for employees and dependents, and agreed to drop its demand for a seventh holiday (App. 207-208).

The Company agreed to reduce the severity for certain rules infractions, agreed to medical arbitration, provided the employee would pay one half the cost of the impartial doctor, and agreed, at the Union's request, to change the wording of its no-strike clause proposal to eliminate the language stating the Union would not "permit" unauthorized work stoppages and substitute the word "authorize" (App. 209-210).

B.

Testimony Concerning Alleged Pre-Election Conduct

Over the strenuous and continuing objection of counsel for the Company, the Trial Examiner, with the approval of the Board, permitted counsel for the General Counsel to go into matters occurring around the time of the Union's representation election in September of 1966 to shed self-styled "background" on the bargaining (App. 222; 245). All of these events are outside the six-month statute of limitations specified in Section 10(b) of the Act. As we will show in the Argument, these matters are far from "background". They were and are continuing to be used unfairly by the Board to cast a pall of subjective suspicion over the entire later course of objective and faultless conduct by the Company in the negotiations and to pre-judge

the results of the bargaining and the outcome of this case itself.

As happens with a frequency which should be disturbing to any Court of Appeals, the Trial Examiner, with Board approval, gave indiscriminate credence to *all* the testimony of *all* the witnesses for the Union and discredited *all* the contradictory testimony of *all* of the witnesses of the Company to these remote conversations in the early Fall of 1966.

Counsel for the General Counsel thus produced some thirteen witnesses to relate statements they had allegedly heard from some five or six supervisors during the hard-fought election in September 1966.

Most of the evidence (over a year old when given) involved conversations the supervisors had with employees trying to persuade them to vote against the Union. In view of the highly remote relevancy of such campaign propaganda to the Company's bargaining from October 1966 through August 1967, we will not burden this brief with an exhaustive analysis of such testimony.

The testimony most directly relied upon by the Board in its brief to prove a violation of the Company's bargaining obligation was the following (Bd. br., p. 20):

1. Testimony of employee Singleton that Company Vice-President Madison told him in the midst of the election campaign that if the Union came in "we'll never sign a contract" (App. 222).

2. Testimony of employee Mays that Foreman Rhoden told him during the campaign that "the Company would never sign a contract with any Union". (App. 223)

3. Testimony of employee Wright that Company Vice-President Thomas Peacock told him that if the Union won the election "we wouldn't get a contract because it was a non-union job." (App. 291).

4. Testimony of employee Felton that foreman Morgan told him during the campaign that the Company would never sign a contract with the Union (App. 282).

5. Testimony of employee Withers that Company President Russell had said in a speech to the employees that "we won't have a Union" (App. 252). This testimony conflicted with the testimony of the employee Thomes, who testified that Mr. Russell's speech to the employees followed verbatim a written speech which Thomes had been given in advance, and which Thomes initialed immediately after the speech (App. 525-526; 212-214). It is of some interest to note that immediately after Withers attributed this statement to Mr. Russell he said "Now, I could have this mixed up with another talk—he said—the boys told me he said—now I don't hear too good—that he said—" (App. 252). It is just short of incredible that the Board not only credited this testimony of Withers, but strongly relies on it in its brief (Bd. br., p. 20).

Madison, Rhoden, Thomas Peacock and Morgan all unequivocally denied the above referred to statements which were thus attributed to them (App. 528-529; 506-508; 521; 515-516). In view of the state of the record it was deemed unnecessary and cumulative to have Mr. Russell deny what Mr. Withers testified the "boys" told him about Mr. Russell's speech.

The Trial Examiner and Board failed to include in their assessment of the background of this case the undisputed fact that this Company has an unblemished record of prior compliance with the National Labor Relations Act. No complaint has ever issued against this Company, even though its employees were union-represented from 1942 to 1958 and even though there was a major strike in 1958 (App. 523).

C.

The Replacement of Strikers, the Conditional Request for Reinstatement and the Manner of Rehiring of Strikers

In order to keep the plant running, the Company began to hire permanent replacements for the strikers shortly after the commencement of the strike. By March 16, 1967 some 160 striking employees had been replaced by permanent replacements hired since the strike began, and they were informed of that fact (App. 72, 376-77). The Company introduced a detailed list at the hearing showing the name of the striker, the name of the striker's replacement, the job classification involved, the hourly rate of pay and the date of replacement (App. 215-19).

At the hearing it was agreed that the Company utilized the following procedure in dealing with strikers who sought reinstatement: if the striker had not been replaced at the time he sought reinstatement, he would be reinstated to his old job with full seniority and all other job rights; if the striker had been replaced and requested to be reinstated, he would be reinstated without discrimination if there was work available, but as a new employee (App. 288-290).

On July 9, 1967 the Company received the following telegram from the Union:

"Sir the United Steel Workers of America has directed all striking members of Florida Machine and Foundry and Fleco to return to work as soon as possible, beginning at 8 a.m. Monday July 10, 1967. Some are presently out of town but will report in the near future. This telegram is the Union's official notice that all strikers hereby request to return to work. Their return to work is not conditioned upon any demand by the Union, save that such employees be put to work on the same job each previously held or on a similar job of equivalent pay" (App. 65-66).

Following this telegram the Company continued to reinstate strikers, using the same policy on reinstatement that it had utilized prior to the telegram.

The Trial Examiner found that the Union's telegram quoted above qualified as an unconditional application for reinstatement.

The Company excepted to this finding of the Trial Examiner based on the Board's decision in *Ozark Dam Constructors*, 99 NLRB 1031, 1038-1041, which held that a similar type of telegram constituted merely an indication that the strike was over and that employees would be requesting reinstatement. This was the apparent construction of the telegram by the strikers themselves since shortly after July 10, 1967 many of the strikers made individual applications for reinstatement (App. 68-71).

The Board did not adopt in full the Trial Examiner's remedy. Instead it held:

"In the Remedy section of his Decision, the Trial Examiner recommended that the Respondent make the strikers whole for any loss of pay suffered because of the discrimination against them, but he did not determine a date on which the backpay period should begin. In view of the various dates on which the strikers made application for reinstatement, we shall order the backpay period for each striker to begin 5 days after the date of such striker's application and to run until the date of reinstatement, with actual dates to be determined in compliance proceedings." (App. 59-60)

General Counsel's Ex. No. 4 (App. 68-71) lists the dates of request for reinstatement of strikers up to the date of the hearing. If any compliance proceeding is required, therefore, it will presumably be limited to ascertaining the dates of request for reinstatement of strikers who applied after the date of the hearing.

ARGUMENT

L

THE COMPANY BARGAINED IN GOOD FAITH WITH
THE UNION

The major premise of the conclusion of the Trial Examiner and the Board was that:

"Under all the circumstances, I find that the Company made no meaningful concessions on any major issue and that its wage offers and other concessions made 'here and there' amounted to no more than 'surface bargaining' and were part of 'a purposeful strategy to make bargaining futile or fail.'" (App. 44)

This keystone finding is erroneous as a matter of law and as a matter of fact, and the edifice of other findings derived from this erroneous conclusion are likewise in error.

The Supreme Court has had recent occasion to redefine the scope and limitations of the obligation to bargain contained in Section 8(a)(5) of the Act. In *Porter Co. v. NLRB*, — U.S. —, 73 LRRM 2561 (1970), the Court held that the Board could not order an employer to include a checkoff provision in a proposed collective bargaining agreement to vindicate his obligation to bargain in good faith. In so ruling the Court stated:

"The object of the Act was not to allow governmental regulation of the terms and conditions of employment, but rather to ensure that employers and their employees could work together to establish mutually satisfactory conditions. The basic theme of the Act was that through collective bargaining the passions, arguments and struggles of prior years would be channeled into constructive, open discussions, leading, hopefully to mutual agreement. But it was recognized from the beginning that agreement might in some cases be impossible, and it was never intended that the Government would in such cases step in, and become a party to the negotiations and impose its own views of a desirable settlement. This fundamental limitation was made abundantly clear in the legislative reports accompanying the 1935 Act."

The Court then noted the provision of Section 8(d) in the 1947 amendments, providing that:

“[S]uch obligation [the obligation to bargain in good faith] does not compel either party to agree to a proposal or require the making of a concession.”

It also noted its construction of that amendment in *NLRB v. American National Ins. Co.*, 343 U.S. 395, 404 (1952), where it said that it is:

“clear that the Board may not, either directly or indirectly compel concessions or otherwise sit in judgment upon the substantive terms of collective bargaining agreements.”

Finally it noted its similar holding in the later case of *NLRB v. Insurance Agents*, 361 U.S. 477, 487 (1960), that:

“it remains clear that § 8(d) was an attempt by Congress to prevent the Board from controlling the settling of terms of collective bargaining agreements.”

The Board decision in the present case is in square contravention of these uniform, recent and clear pronouncements of the Supreme Court. The Trial Examiner, with Board approval, made the following holdings:

1. “The Company proposed and insisted throughout the negotiations that the Union accept contract clauses which drastically curtailed the Union’s representation rights.” (App. 41)
2. “As the Company included in its proposals no improvements in existing conditions of employment which might compensate the employees for this sweeping relinquishment by the Union of their right of representation its proffered contract was one which the Union could not possibly justify to the employees and hence frustrated rather than furthered collective bargaining.” (App. 42-43)
3. “Yet the Company never significantly retreated from its initial bargaining position so making negotiations an exercise in futility . . .” (App. 43)

4. "The Company never deviated from its initial position that seniority be limited to job classifications within a department and ultimately insisted on its own seniority proposal . . ." (App. 44)
5. "The Company, however, never retreated from its insistence that the Union accept far-reaching limitations on its right to strike together with voluntary arbitration of grievances . . ." (App. 44).
6. "Under all the circumstances, I find that the Company made no *meaningful* concessions on any *major* issue and that its wage offers and other concessions made 'here and there' amounted to no more than 'surface bargaining' . . ." (App. 44) (Emphasis added).

All of these findings constitute undisguised judgments by the Board—uniformly adverse to the Company—on the substantive positions and proposals made in the bargaining. Such findings fly literally in the face of the *Porter* line of cases and their uniform construction of Section 8(d) of the Act.

The Trial Examiner, with the Board's approval, brushed aside these objections in a footnote, barely acknowledging the existence of the *American National Insurance Company* and *Insurance Agents* cases, and concluding that they did not preclude the Board's substantive evaluation of bargaining positions "in the context of the whole case" (App. 41-42). This, however, is precisely the kind of indirect effort by the Board to compel concessions and sit in judgment on the substantive terms of collective bargaining proposals that the Board expressly condemned in the *American National Insurance* case. The adverse bargaining order against the Company and the reinstatement with backpay order on which it is based has been issued because of the Board's adverse judgment on the proposals made by the Company in bargaining. To hedge the proposition by stating that this judgment was made "in the context of the whole case" does not lessen the intrusion of the Board

into the substance of the proposals and concessions made in the bargaining. It is merely a smokescreen of verbiage calculated to divert the attention of this Court from the control the Board seeks to impose over the terms and substance of the bargain.

Neither the Trial Examiner nor the Board held that any of the bargaining proposals made by the Company was illegal. Yet throughout the decision of the Trial Examiner and Board there runs an undercurrent of disapproval of certain negotiating positions taken by the Company.

Thus the Trial Examiner faults the Company's proposed "Management Rights" clause because it seeks to exempt from arbitration certain of the Company's essential prerogatives. Inasmuch as there is no legal requirement or compulsion to agree to an arbitration clause at all, it is anomalous for the Board to cast doubts on the validity of a proposal exempting certain well recognized management prerogatives from arbitration.

The Trial Examiner further faults the Company's proposed "Zipper Clause", which sought only to recite that the collective bargaining agreement contained the entire agreement between the parties. This clause, commonly found in labor agreements, is designed to prevent the *Jacobs Mfg. Co.*⁷ type of situation in which the Union demands bargaining in mid-term of the contract over a matter not specifically considered or discussed by the parties in bargaining. The Board and Courts, while giving various meanings to such clauses,⁸ have never before suggested that such clauses are illegal or may be considered illegal even "in the context of the whole case."

The Trial Examiner and Board castigated these contract proposals as constituting, if accepted, a "sweeping relin-

⁷ *Jacobs Mfg. Co.*, 94 NLRB 1214, 28 LRRM 1162, enf'd., *NLRB v. Jacobs Mfg. Co.*, 196 F.2d 680 (2d Cir. 1952).

⁸ See, e.g., *NLRB v. C & C Plywood Corp.*, 385 U.S. 421 (1967).

quishment by the Union of their right to representation" (App. 42). This generalization overlooks the fact that the basic representative rights of a Union are the right to negotiate on behalf of the employees it represents and to represent such employees in the prosecution of grievances. These rights are in no way touched by the Company's proposal.

The Trial Examiner also faulted the Company's concurrent proposals of no-strike and voluntary arbitration clauses, finding them in some way mutually incompatible (App. 43). This was too much even for the Board, which disclaimed adoption of this portion of the Trial Examiner's Decision (App. 57).

In support of its asserted authority to monitor the substance of the negotiations and evaluate the "meaningfulness" and "significance" of Company proposals, counterproposals and concessions, the Board's brief refers to conclusionary excerpts from various cases involving wholly different factual situations. Prominent among these cases relied upon by the Board in its decision and brief is *NLRB v. Herman Sausage Co.*, 275 F.2d 229 (5th Cir. 1960). Not quoted by the Board is the first principle established by the Court in that case:

"The obligation of the employer to bargain in good faith does not require the yielding of positions fairly maintained. It does not permit the Board, under the guise of finding of bad faith, to require the employer to contract in a way the Board might deem proper." 275 F.2d at 231-232.

In that case, however, the Board found evidence to support a conclusion, adopted by the Court, that the employer had a "purposeful strategy" to frustrate or avoid bargaining. The evidence supporting that conclusion included the following:

1. A unilateral wage increase prior to the strike and prior to a bargaining impasse.

2. Efforts by the Employer to bypass the Union and to convince the employees that they need not rely upon a contract, but rather should rely on the Bible and faith in the Company president.

3. Contract proposals by the Company that sought to take away existing benefits, including a dues checkoff provision.

These features simply do not exist in the instant case.

The Courts of Appeal have been vigilant in refusing to enforce Board bargaining orders in which the Board has indirectly sought to influence the substance of the bargain by finding that the "totality" of the employee's conduct violated Section 8(a)(5) or by drawing adverse inferences on the employer's "state of mind" by reference to the kind of proposals made in the bargaining. See, e.g., *Collins & Aikman Corp. v. NLRB*, 395 F.2d 277 (4th Cir. 1968) ("The Board's reliance upon the fact that the Company did not change its position in regard to arbitration, check-off, and a no-strike clause until September 29 was equally improper"); *NLRB v. Gopher Aviation Co.*, 402 F.2d 176, (8th Cir. 1968); *NLRB v. Getlan Iron Works, Inc.*, 377 F.2d 894 (2d Cir. 1967); *NLRB v. Alva Allen Industries, Inc.*, 369 F.2d 310 (8th Cir. 1966) ("The Board may not sit in judgment on the reasonableness of the Union proposals or on the unreasonableness of the Company's action in rejecting them"); *NLRB v. Almeida Bus Lines, Inc.*, 333 F.2d 129 (1st Cir. 1964); *NLRB v. General Tire & Rubber Co.*, 326 F.2d 832 (5th Cir. 1964); *Fetzer Television, Inc. v. NLRB*, 317 F.2d 420 (6th Cir. 1963); *NLRB v. Cummer-Graham Co.*, 279 F.2d 757 (5th Cir. 1960) ("The Board does not urge that insistence on a no-strike clause without an arbitration clause establishes a per se refusal to bargain, but only that it justifies an inference of bad faith. If the Respondent had, and we say it did have, the legal right to insist upon the terms of its proposal, we think it cannot be said that the exercise of the right is evidence of bad faith");

Philip Carey Mfg. Co. v. NLRB, 331 F.2d 720 (6th Cir. 1964); *NLRB v. Wonder State Mfg. Co.*, 344 F.2d 210 (8th Cir. 1965); *Radiator Speciality Co. v. NLRB*, 336 F.2d 495 (4th Cir. 1964) ("It must constantly be recalled that the Act does not require the employer to agree with the bargaining agent, even in respect to 'wages, hours and other conditions of employment.'")

The record leaves no doubt that the key issue in the negotiations was the Company's insistence on a broad management rights clause and a clause limiting the scope of arbitration. The Board condemns the Company's position in these key issues in this case. Yet, in a case where an employer took a remarkably similar position on these issues, the Board itself upheld the Company's conduct and dismissed the Section 8(a)(5) complaint. In *Procter & Gamble Mfg. Co.*, 160 NLRB No. 36, 62 LRRM 1619 (1966), the Company insisted throughout the negotiations on an equally broad management rights clause⁹ and a clause significantly limiting the scope of issues that could be submitted to final and binding arbitration. Just as in the present case, the Company in the bargaining conceded that where an issue was deemed to be not arbitrable the Union could strike over such issue and the no-strike clause would be modified to that extent. In assessing those very similar contract proposals the Board itself in the *Procter & Gamble* case stated that:

In this connection it is well established that an employer's insistence upon management rights—limited arbitration provisions, which are mandatory subjects of bargaining, does not itself violate Section 8(a)(5)."

⁹ The clause in that case provided:

"The Employer will continue exclusively to establish and change production schedules, to create new jobs, and job classifications, to discontinue jobs and job classifications, to combine jobs and job classifications, to assign, reassign, and rearrange duties for jobs and job classifications and to contract out work."

As the authority for this proposition the Board cited the Supreme Court decision in *NLRB v. American National Insurance Co.*, 343 U.S. 395, where the Court held that "... we reject the Board's holding that bargaining for the management functions clause proposed by Respondent was *per se* an unfair labor practice."

While the Board in the *Procter & Gamble* case continued to assert its authority to "take such proposals into account in assessing an employer's motivation in negotiations," it is difficult to understand how the Board can taken virtually the same contract proposals "into account" in one case to arrive at a conclusion of guilt and in another case to arrive at a conclusion of innocence.

In a recent Fifth Circuit decision, *NLRB v. Laney & Duke Storage Warehouse Co.*, — F.2d —, 73 LRRM 2962 (5th Cir. April 7, 1970), that court found that the Company's insistence in bargaining with the union on a management rights clause, a no-strike clause and a non-compulsory arbitration clause, which were virtually identical to the clauses involved in the present case, was perfectly proper. In that case, the court held:

"Thirdly, the Board contends that the company unswervingly insisted on retaining unilateral control over working conditions and, therefore, did not bargain in good faith. Throughout the negotiations the company did insist on a strong management rights clause as well as no-strike and noncompulsory arbitration clauses. The master, however, found that the company made major concessions relating to employment conditions. Those included alterations in seniority, proposal of some selective wage increases, agreement to revocable check-off, six holidays, compulsory arbitration for discharged employees with vested pensions rights, and arbitration for medical examination conflicts. Furthermore, the company placed in the record seven collective bargaining contracts containing virtually the same types of management rights proposals that the Board now contends the company could not in good

faith have expected a union to accept. We agree that the Board did not establish an unalterable demand by the company for unilateral control of employment conditions so as to constitute a refusal to bargain in good faith. Cf. *NLRB v. American Aggregate Company*, 5 Cir. 1964, 335 F.2d 253."

The prevalence of noncompulsory arbitration clauses and clauses enumerating management rights in major national collective bargaining agreements has been the subject of two studies by the United States Department of Labor.

In a 1966 study made by the United States Department of Labor, some 1,717 major agreements were analyzed. Of these some 108 agreements had no provision for grievance arbitration at all, and 46 contracts had a provision, such as the one in issue here, for arbitration by mutual consent. "Major Collective Bargaining Agreements, Arbitration Procedures", Bulletin No. 1425-6, United States Dept. of Labor, p. 5.

A similar study of management rights clauses by the Department of Labor found that of the 1,773 major agreements studied, 860 contained a formal statement of management rights. "Major Collective Bargaining Agreements, Management Rights and Union-Management Cooperation," Bulletin No. 1425-5, U. S. Dept. of Labor, p. 5. In addition, this study makes the following observation on the various types of management rights clauses:

"Once the basic decision is reached to include a statement of rights in the agreement, a further determination has to be made concerning the form that the statement should take, i.e., whether it will consist only of a broad and general definition of rights (general statement) or contain an enumerated list of specific functions reserved to the employer (enumerated statement).

"Each form has its advocates. Those preferring the general statement argue that by enumerating rights important functions may be overlooked inadvertently.

Should an issue involving an overlooked right subsequently reach arbitration, the arbitrator could reason that the absence of this right expressed the parties intent; therefore, the function could no longer be exercised by management unilaterally. On the other hand, supporters of enumerated statements have held that specific provisions clearly define the rights of management and thereby offer better protection against their erosion. Furthermore, by furnishing a definite guide to arbitrators, many such clauses, it is claimed, help to resolve disputes that may arise as to the interpretation or application of agreement terms.

"The latter argument seems to be the more compelling one, at least up to the time of this study. Enumerated statements, found in 713 agreements, prevailed by a wide margin over general statements found in 147 agreements."

Thus, the contract clauses that the Board's decision and brief castigate in the present case are far from atypical. They are, on the contrary, the typical grist of collective bargaining and have been accepted by many labor organizations in their agreements with major national corporations.

Apart from questioning the merits of various positions taken by the Company in bargaining, the Trial Examiner and Board criticized other features of the Company's conduct at the bargaining table.

1. Company Concessions

The Trial Examiner and Board found that "the Company never significantly retreated from its initial bargaining position . . ." (App. 43), and that "the Company made no meaningful concessions on any significant issue . . ." (App. 44).

As stated above, it is the position of the Company, based on the quoted rulings of the Supreme Court, that the Board may not directly or indirectly require a company—or union—to make concessions in order to vindicate its good

faith. Assuming, however, that concessions by one side or the other are relevant in disclosing a party's good faith at the bargaining table, the finding that the Company made no "meaningful" or "significant" concession (however those subjective adjectives are construed) is simply at war with the record evidence and fails utterly to take into consideration that the Union had made no "meaningful" or "significant" concessions to the Company in the bargaining.

In the course of the bargaining the Company made the following "significant" and "meaningful" change of position from its original position.

1. *Rates of Pay.* The Company went from an initial position of holding the current line on wages to a proposal increasing wages of four specified skilled classifications from 12 cents to 27 cents per hour (meeting of 1/25/67), and finally to a proposal giving all employees (other than the four classifications in which an offer had been made) an across-the-board wage increase of 8 cents per hour (meeting of 2/7/67).
2. *Shift Differential.* The Company went from a position of holding the line on shift differentials to the current 5 cents for the 4:00 p.m. shift, 8 cents for the 8:00 p.m. shift and 10 cents on the 11:30 p.m. shift to 7 cents, 10 cents and 12 cents respectively (meeting of 2/7/67).
3. *Insurance.* The Company went from its initial position that a \$9.00 daily hospitalization was adequate to an offer of \$15.00 per day (meeting of 2/7/67).
4. *Vacations.* The Company went from an initial position that an employee to be eligible for vacation should have worked 1,800 hours in the preceding year to 1,700 hours (meeting of 1/6/67) and finally to 1,650 hours, which was agreed to by the Union (meeting of 2/7/67).
5. *Reporting Time.* The Company went from its position that an employee should receive two hours reporting time if he showed up for work and no work was available, to

three hours (meeting of 1/6/67), and finally to four hours, which the Union had proposed (meeting of 2/7/67).

6. *Seniority.* The Company went from an initial position making "ability as recognized by the Company" the primary factor in promoting, rehiring or transferring to a position making seniority the basis for promotions, layoffs, transfers and filling of permanent vacancies "provided the employee has the ability and physical fitness to perform the required work" (App. 120).

7. *No-Strike Clause.* The Company went from a proposed clause that the Union not "permit" work stoppages during the term of the agreement to a clause reciting that the Union would not "authorize" a work stoppage during the contract (meeting of 8/7/67).

8. *Physical Examination.* The Company went from a position requiring an employee to take a physical exam at any time for any reason (with suspension for refusal to take exam), to a position of providing that an employee could challenge an adverse physical exam with an exam by his own doctor and a provision for a third doctor (paid equally by the Company and employee) to resolve differences of opinion (meeting of 8/7/67).

9. *Company Rules.* The Company went from an initial position that the Company rules had to be a physical part of the collective bargaining agreement to a position that existing rules would be recognized as reasonable in a side letter (meeting of 2/7/67).

10. *Checkoff.* The Company made it clear to the Union on this vital subject of Union interest that "we see no problem if everything else is agreed upon" (App. 173, meeting of 2/7/67). In labor relations parlance this means that the item will be agreed to, but its acceptance will follow acceptance of the package as a whole.

These are the major Company concessions that the Trial Examiner and Board characterize as not "significant" or

"meaningful". One can only wonder where the line is drawn between what is significant and meaningful and what is not. The Union's final wage offer was 18 cents per hour across-the-board. The Company's was 8 cents. Would 9 cents have received the meaningful and significant blessing of the Board—or would it be 13 cents—or 18 cents? Or would any wage offer at all have been branded insignificant and meaningless unless the Company had also made concessions in its arbitration and management rights proposal?

Once the Board and the courts are put into the business of evaluating the meaning and significance of Company offers, they enter a political and economic thicket where there are no objective standards. That is one reason the Supreme Court and the Courts of Appeal have been so diligent in keeping the Board from becoming "a party to the negotiations" and imposing "its own views of a desirable settlement", *Porter Co. v. NLRB, supra*.

2. Lack of Union Concessions

Even assuming the propriety of the Board's intrusion into the substantive terms of the bargaining, it is immediately evident that its focus was one-sided. All that the Trial Examiner and Board looked for were concessions by the Company from its original position.

The Trial Examiner and Board took an adverse implication from the fact that the Company "never significantly retreated from its initial bargaining position" on the subjects of management rights, arbitration and the proposed "zipper" clause (App. 43). Under established law, no retreat was necessary.

Moreover, what the Trial Examiner and Board failed to note is that the Union "never significantly retreated from its initial bargaining position" that every disagreement between the Union and Company, whether it involved a

management prerogative or not, should be made arbitrable and thus ultimately subject to control by an outside arbitrator. It was, in fact, on this basic philosophical disagreement that the negotiations failed to produce agreement. This was clearly a negotiable item on which both parties had the right to take and hold positions.

If a company's good faith is to be tested by its concessions on points of vital interest, should not this apply to the union? If the union fails to make any concession on a point of this importance why is the burden automatically shifted by the Board to the company to concede? The Fourth Circuit has already had occasion to criticize the tendency of the Board to look only for Company concessions. In *NLRB v. Stevenson Brick & Block Co.*, 393 F.2d 234 (4th Cir. 1968), Judge Sobeloff stated:

"In arguing the employer's bad faith the Examiner's report relied heavily upon the employer's failure to make any concessions, for he gave no discernible weight to the uncontradicted testimony that after the employer tendered his proposed contract the Union failed to submit a single counter-proposal prior to the May 3 strike . . . Surely the conduct of the Union cannot be completely ignored when assessing the good or bad faith of the employer at the bargaining sessions. We perceive here no one-sided obduracy wilfully clogging agreement . . ."

Another facet of the Union bargaining was wholly ignored by the Board. Although Florida is a "Right-to-Work" State, the Union proposed and continued to insist on an unlawful maintenance of membership provision in the contract (App. 80; 504). Had the Company been looking for an excuse to cease bargaining with the Union completely, it could have merely pointed to this as a *per se* violation of the Union's duty to bargain under Section 8(b)(3). Instead, the Company continued to meet with the Union in an effort to arrive at an agreement.

3. Frequency of Meetings

The Trial Examiner and Board found that "the Company disregarded its obligation under Section 8(d) of the Act to meet and negotiate with the Union with reasonable frequency" (App. 40-41).

This was an initial contract situation. The parties met, or attempted to meet, on eleven occasions:

1. October 27, 1966
2. Noxember 28, 1966
3. December 15, 1966
4. January 6, 1967
5. January 25, 1967
6. February 7, 1967
7. February 13, 1967
8. February 22, 1967
9. March 14, 1967
10. May 1, 1967
11. August 7, 1967

At the first scheduled meeting on October 27, 1966, the Union failed utterly to show up (App. 147). The Union in fact waited a full month before requesting another meeting on November 28, 1966.¹⁰ At this meeting the Union went over the contract that it was proposing and asked the Company to submit a written counterproposal and to provide certain information with respect to the unit employees and the Company welfare plans.

A Union witness testified that at the conclusion of the November 28, 1966 meeting he urged "the Company to meet as soon as possible, preferably in a succession of days . . ." (App. 423) In view of the outstanding

¹⁰ In past cases the Board has evaluated the reasonableness of the frequency of bargaining by reference to the Union's diligence in keeping its appointments. See *Vac-Art, Inc.*, 124 NLRB No. 132, 44 LREM 1571 (1959).

requests for information and the need to propose a complete new contract proposal which would be responsive to the Union's proposal as explained at the meeting of November 28, 1966, it is patently absurd to suggest that the Company return to the bargaining table the very next day, or in a succession of days. The interval between November 28 and December 19 is certainly not an unreasonable period of time in which to do the work that was required by the Union requests, which the Company was honoring.

The meeting of December 19, 1966 was largely devoted to an examination of the Company's counterproposal. At this meeting wide areas of disagreement between the parties began to develop, particularly on the subject of arbitration.

At the conclusion of this meeting, McCall, the chief Union negotiator (a different one than appeared at the November 28 meeting), testified that he sought to obtain a date from the chief Company negotiator for the next bargaining session. He testified that the Company negotiator told him that he would have to check his calendar and call him back. He testified that the Company negotiator failed to call him back. (App. 439-440).

The utter triviality of this incident, on which the Board relied heavily in its decision, is disclosed by the fact that a few days after the incident the Union negotiator called the Company negotiator and agreed on January 6, 1967 as a date for the next meeting. This was a scant seventeen days from the December 19th meeting. In this interval was the week between Christmas and New Year's Day when normal business of this type is usually suspended.¹¹

One can search the record and find no indication following the meeting of December 19, 1966 that an accelerated

¹¹ See *Swift & Co., Inc.*, 124 NLRB No. 46, 44 LRRM 1388 (1959), where the Board held that a Company's refusal to meet for bargaining during the week between Christmas and New Year's Day was not unreasonable.

scheduling of bargaining sessions after that date would have produced a breakthrough in the negotiations leading to an early agreement. A close scrutiny, in fact, of Mr. McCall's testimony on this point will show that his real complaint was not directed to the failure to meet sooner than January 6, 1967, but rather at what he considered to be Mr. Bowden's failure to return his telephone call after the bargaining on December 19.

The meeting on January 6, 1967 produced little movement on the outstanding issues by either party. On the crucial issue of arbitration, the meeting produced further disagreement (App. 155-156).

The Union witness testified that at the conclusion of this meeting he "encouraged the Company to meet with us as promptly as possible" (App. 475). Yet, these urgings were not accompanied by any indication of movement by either party on the critical issues of the negotiations. With the exception of the subject of insurance, the parties were merely beginning to repeat their positions. For this reason the Company suggested that the next meeting be scheduled at a time when the Company's insurance man could be present to explain the current Company insurance program (App. 475). That date was January 25, 1967—some nineteen days after the meeting on January 6. Again, this period of time was perfectly reasonable in all the circumstances.

There were no other complaints that bargaining meetings were not held promptly. Nor could there be. In spite of the continuing wide difference between the parties, they met on February 7, 1967—twelve days after the previous meeting; on February 13, 1967—less than a week after the meeting of the 6th; and on February 22, 1967—nine days after the meeting of the 13th.

It is also worthy of note that after the meeting of February 7, 1967 when the Company made the majority

of its concessions in the bargaining,¹² the Union failed in the next meeting on February 13, 1967 to send its two previous leading negotiators—Edwards and McCall (App. 179). This was a signal—clearly understood by all participants—that the Union had given up on a resolution of the dispute at the bargaining table and was gearing instead for a strike. The Union's conduct on February 13, 1967 confirmed that fact.

At that point, if not before, the parties were at an impasse, and the strike began on February 28, 1967.

In all the circumstances it is apparent that the Company met with the Union at reasonable times, and did not delay the negotiations.

The Board's brief seeks to import a classic red herring into the discussion of the reasonableness of the frequency with which bargaining sessions were held. It seeks, without record support, to attribute what it conceives to be delays in the bargaining to the fact that the Company's chief negotiator was an attorney with a heavy workload. No evidence whatever exists tending to show that any bargaining meeting was postponed or delayed because of Mr. Bowden's "heavy workload". Proceeding from this assumed and fictional premise, the Board's brief cites *NLRB v. Exchange Parts Co.*, 339 F.2d 829 (5th Cir. 1965), for the proposition that an employer's duty to meet and bargain with the Union at reasonable intervals cannot be avoided simply because the Company's chief negotiator is a busy attorney (Bd. br. p. 22).

The Board's brief fails utterly to come to grips with the underlying question of whether in the circumstances of this case the Company in fact met with the Union at reasonable times. As shown above, the answer to this question must be in the affirmative.

¹² The Company made concessions on rates of pay, shift differentials, reporting pay and vacations.

While the citation of cases in this area is difficult since the circumstances of each case are somewhat different, the Board itself has on past occasions specifically held that a similar number of bargaining sessions held within a similar period of time as are involved in this case have evidenced the willingness of the Company to meet at reasonable times. See *Texas, Industries, Inc.* 140 NLRB 527, 52 LRRM 1054 (1963) (11 meetings in 4 months found reasonable); *Charles E. Honacker*, 147 NLRB 1184, 56 LRRM 1371 (1964) (11 meetings in five and one half months found reasonable).

4. Alleged Withdrawal of Concessions

Some effort is made in the Board's brief (pp. 7 and 23) to fault the Company's good faith in bargaining by claiming that the Company negotiator on December 19 reneged on certain agreements and concessions he made to the Union at the meeting on November 28. This argument overlooks the fact that the November 28 session was the first meeting between the parties and was devoted exclusively to an initial review of the Union proposal. At this time the Company had not even submitted a proposal of its own. In this embryonic stage of the negotiations no effort was made or requested to agree on contract language. The Company negotiator merely indicated to the Union, in the course of seeking to understand the Union proposal,¹³ certain general areas where there was agreement in principle, or where there would be no strong Company objection in principle. These areas included provisions concerning recognition, certain aspects of holiday and vacation pay, leaves of absence, Union use of bulletin boards and submission of discharge cases to the grievance procedure (App. 419-423). The Company's written counterproposal submitted on December 19, 1966

¹³ As the Union negotiator admitted, the Company's stated purpose in this meeting was "to ask a few questions about our proposal, that there were some areas he didn't quite understand." (App. 419).

did not include *in haec verba* the union proposals on all these subjects. This was due to the fact either that the Company believed there was a better way of expressing the point or the fact that the Company saw no reason for express inclusion in its own initial counterproposal of the particular matter. The omission of some of these matters from the Company's written counterproposal did not indicate that agreement was withdrawn. The record fails to show any disagreement over these matters in later negotiations. In short, there was no logical reason for the Company to "counterpropose" items already agreed upon.

The rule that the Board seeks to establish is that the slightest indication by a Company negotiator at an initial bargaining session of agreement or partial agreement in principle to a union proposal means that the proposal, in the exact language proposed by the Union, becomes fixed and a necessary part of any future company counterproposal. Such a rule would obviously stultify any true give and take in negotiations. Company negotiators would withhold any indication of agreement less they be trapped into a situation where their general, tentative agreement in principle stated in a meeting devoted to an overview of the Union's initial proposal is transformed into a binding commitment to the exact union proposal in the precise language proposed by the Union.

5. The Board's Unwarranted Use of Alleged Pre-Election Conduct To Taint the Negotiations

Having failed to prove that the Company engaged in bad faith bargaining in the negotiations themselves or through its actions outside the bargaining at the time negotiations were in progress, the Trial Examiner and Board were forced to rely on "evidence" antedating the six-month statute of limitations contained in Section 10(b) of the Act.

This "evidence" consisted of the testimony of a few employees that a few supervisors stated in the course of the election campaign that if the Union won the Company would never sign a contract. The Board uses this testimony as a convenient self-fulfilling prophecy relieving it of the necessity to prove actual bad faith in the bargaining itself. As we will show below, such testimony is irrelevant, is incredible and violates the limitation stated in Section 10(b) of the Act.

The Court should understand the wholly different context and atmosphere between remarks made in a hotly contested election campaign and conduct in the bargaining itself. Where the bargaining itself is clear and unambiguous, as is the case here, there is little or no probative value in injections into the record bits and pieces of testimony about an election campaign that preceded the bargaining. The only conceivable purpose of introducing such testimony is to taint and prejudice conduct at the bargaining table that is objectively faultless.

This is especially objectionable where the alleged pre-election conduct consists of oral statements attributed to but denied by managerial personnel as having been made during the heat of an election campaign. It is obviously easy to misconstrue and misinterpret oral statements and give them a particular gloss, especially when the testimony is given over a year later and recollections are faulty. If testimony of this kind is to be credited and given probative or even conclusive weight in judging the good faith of company negotiators in the subsequent bargaining, the company necessarily enters into the bargaining with two or even three strikes against it, even before it has an opportunity to demonstrate its good in the actual bargaining.

The proper evaluation of such evidence, even where the pre-election conduct was found to be an unfair labor

practice, was given by Judge Sobeloff in *NLRB v. Stevenson Brick & Block Co.*, 393 F.2d 234 (4th Cir. 1968):

"The Trial Examiner further predicated his decision upon the employer's unfair labor practices committed more than seven months before the bargaining sessions began. Such remote conduct has little probative value in determining the employer's bargaining intentions. This misconduct cannot, therefore, support the charge of refusing to bargain in violation of Section 8(a)(5) without some showing of bad faith at the negotiations themselves. As indicated above, no such showing has been made." 393 F.2d at 238

Section 10(b) of the Act prescribes a six-month statute of limitations applicable to unfair labor practices. Unless the charge is filed within six months of the occurrence of the alleged unfair labor practice, it will not be further processed by the Board. Section 10(b) was interpreted in *Local Lodge No. 1424, IAM v. NLRB*, 362 U.S. 411 (1960). There the Court referred to two situations in which the Board would have to decide whether events anterior to the Section 10(b) period should be admitted into evidence in a Board hearing:

"It is doubtless true that § 10(b) does not prevent all use of evidence relating to events transpiring more than six months before the filing and service of an unfair labor practice charge. However, in applying rules of evidence as to the admissibility of past events, due regard for the purposes of § 10(b) requires that two different kinds of situations be distinguished. The first is one where occurrences within the six-month limitations period in and of themselves may constitute, as a substantive matter, unfair labor practices. There, earlier events may be utilized to shed light on the true character of matters occurring within the limitations period; and for that purpose § 10(b) ordinarily does not bar such evidentiary use of anterior events. The second situation is that where conduct occurring within the limitations period can be charged to be an unfair labor practice only through reliance on an earlier unfair labor practice. There

the use of the earlier unfair labor practice is not merely 'evidentiary', since it does not simply lay bare a putative current unfair labor practice. Rather, it serves to cloak with illegality that which was otherwise lawful. And where a complaint based upon that earlier event is time-barred, to permit the event itself to be so used in effect results in reviving a legally defunct unfair labor practice." 36 U.S. at 416-417.

As was true in the *Local Lodge 1424* case, the situation here is of the latter variety. The conversations occurring during the election campaign are not mere "background" to the Section 8(a)(5) charge. They are the essence of the charge. The reliance of the Trial Examiner (App. 23-26) and the Board's brief (Bd. br. p. 3-6) on these events to attempt to establish the illegality of the bargaining is obvious. If, as we have argued above, the Company's conduct during the bargaining was not illegal, it cannot be made illegal by reference to events antecedent to the Section 10(b) period. The Board in this case is using the anterior events to "cloak with illegality that which was otherwise lawful".

Since the *Local Lodge 1424* case the Courts of Appeal have been vigilant in maintaining the distinction between evidence used legitimately as "background" and evidence actually necessary to sustain the charge. Thus, for example, in *Gulfcoast Transit Co. v. NLRB*, 332 F.2d 28 (5th Cir. 1964), the Court said:

"A careful review of the record fails to convince us that the conduct of the Company with its employees during the Section 10(b) period . . . supports the charge of unfair labor practices. It is only when events beyond the bounds of the period are brought into evidence can the charges be sustained." 332 F.2d at 33.

See also *NLRB v. MacMillan Ring-Free Oil Co.*, 394 F.2d 26, 33 (9th Cir. 1968).

The testimony relied upon by the Board in concluding that the Company had announced during the election cam-

paign its determination not to enter into a contract with the union is, in any event, highly suspect and incredible. As shown above in the Statement of the Case, to arrive at the Board's conclusion requires crediting of all the testimony of all the union witnesses and discrediting all of the testimony of all the Company witnesses, since the Company witnesses uniformly denied the statements attributed to them by the union witnesses. It would unduly extend this brief to point up all the inherent deficiencies and incredibility of the employee testimony credited. It would, however, prove instructive to the Court to read the credited testimony of Lephus Felton (App. 280-287) to obtain a flavor of the kind of evidence relied upon by the Trial Examiner and Board in concluding that the Company had announced its intent to refuse to bargain during the election campaign.

It is equally instructive to note the Board's reliance (Bd. br., p. 20) on the testimony of the employee witness regarding a speech by the Company President. His testimony was contradicted by another employee witness who testified that the President's speech followed exactly a written script which the witness followed as the President spoke and which the witness initialled after the speech (App. 525-526). In addition, Withers admitted that he might have mixed the speech up with another one, that he didn't hear "too good" and ultimately that he was reporting what "the boys" told him the Company President said (App. 252).

The Fourth Circuit Court of Appeals in *Collins & Aikman Corp. v. NLRB*, 395 F.2d 277, (4th Cir. 1968) and in *NLRB v. Reeves Broadcasting Corp.*, 336 F.2d 590 (4th Cir. 1964), has had occasion to criticize the Board's practice of attempting to prove Section 8(a)(5) violations by reference to previous statements by supervisory personnel that there would never be a contract with the Union.

The deficiencies in this testimony—given well over a year after the alleged conversations took place—point to

the Congressional wisdom in enacting Section 10(b) to prevent the litigation of stale unfair labor practice charges.

The Board completely ignores other far more relevant and probative "background" evidence in this case. The evidence showed that this Company has had an unblemished record of compliance with the National Labor Relations Act, even though its employees had been union-represented for sixteen years (1942-1958) and even though the Company underwent a major strike in 1958 (App. 523).¹⁴ In fact, no unfair labor practice charge has ever been filed against this Company before the instant case (*Ibid.*).

6. Conclusions on the Bargaining

When all else fails, the Board argues that if no individual element of the Company's conduct involves a violation of the bargaining obligation, that the Court should still find a violation because of the "totality" of the Company's conduct. As an appendage to this argument, the Board seeks to ward off further judicial scrutiny by an incantation of its own alleged "expertise" (Bd. br. pp. 18-19).

This kind of argument defies legal analysis since legal analysis can only evaluate each element of the conduct complained of in the light of the statute and the case law developed by the Board and courts. When such an analysis vindicates the Company's conduct, it is legally incomprehensible and literally indefensible for the Board to argue that in some unexplained way the "totality" of the conduct transcends its individually lawful elements and becomes in some manner illegal. The Courts must be wary of accepting this kind of hocus-pocus reasoning passed off under the guise of expertise.

¹⁴ The Company was prevented by the ruling of the Trial Examiner from showing that it had successfully conducted annual negotiations, leading to a succession of collective bargaining agreements, with two national unions over the period of 16 years that it had recognized the unions (App. 523).

In any event, whether viewed individually or in its so-called "totality", the Company's conduct demonstrated an honest effort to arrive at an agreement, without compromising its position on what it conceived to be the vital points necessary to protect its interests in the negotiations. The Act requires no more.

Here the employer met with the Union at reasonable intervals on eight occasions between October 27, 1966 and February 22, 1967. There was a genuine and deep seated philosophical difference between the parties on the inter-related issues of management rights, arbitration and no-strike provision. In the course of the negotiations the Company made several concessions on points of vital importance to it, but neither the Company nor the Union chose to accept the other's view on management rights, arbitration and no-strike clauses. Ultimately, these differences of opinion led to the strike of February 28, 1967. In short, the Company's conduct at the bargaining table did not "reflect a cast of mind against reaching agreement" *NLRB v. Katz*, 369 U.S. 736, 747.

No matter how hard the Board disclaims it, or how sophisticated its argumentation is, the ultimate aim of the Board in this proceeding is to force the Company to change its position on these three inter-related subjects. Under the reasoning of the *H.K. Porter* case *supra*, the Board cannot be allowed to accomplish this objective.

II

THE STRIKE WAS AN ECONOMIC ONE AND NOT CAUSED BY ANY UNFAIR LABOR PRACTICE OF THE COMPANY

The Trial Examiner, with the approval of the Board, found that "the strike which began on the night of February 28, 1967, is attributable to the Company's failure to bargain in good faith . . ." (App. 45). No record evidence is cited to support this critical finding.

Of course, if the Company is found to be correct in arguing that its bargaining was in good faith, it is evident

that the strike was not caused by any Company unfair labor practice,¹⁵ and the causation finding must automatically fall. Even, however, if the Company's bargaining is found to have violated Section 8(a)(5) in some manner there must be substantial evidence proving that the strike of February 28, 1967 was in fact caused by the alleged unfair labor practice. No such evidence exists in this case. Certainly, the Union's self-serving statement in its letter following the strike does not constitute probative evidence concerning causation, and there is no evidence in the record on this subject.

The rule on the subject of strike causation was correctly stated in *Filler Prods., Inc. v. NLRB*, 376 F.2d 369 (4th Cir. 1967). There the Court held that the Board must show by "credible evidence" that the alleged unfair labor practices had a "causal connection with the strike." The Court in that case additionally held that:

"Nor is weight to be given to the fact that the Union in its telegram to the Company and on its placards, referred to the strike as a 'strike because of unfair labor practices.' Without credible evidence to support it, it can only be regarded as a self-serving statement warranting no finding of fact by the Board." 376 F.2d at 379.

This, of course, is precisely the kind of "evidence" apparently, although not explicitly, relied upon by the Board in this case.

The record in this case demonstrates that the cause of the strike was not alleged unfair labor practices, but rather was the fundamental difference of opinion between the parties on the scope of arbitration in the new agreement and other economic matters. The subjects of disagreement were the familiar grist of collective bargaining

¹⁵ The Trial Examiner and Board agreed that the charges alleging unlawful promises to employees to work during the strike, alleged refusals to give information and the alleged unilateral increase on October 2, 1967 did not cause or prolong the strike (App. 46-47).

disputes and the strike following these disagreements must be regarded as an economic strike. While there was discussion in the bargaining about the strike prior to its inception, this discussion never concerned any alleged unfair labor practice.

The important difference between strikes caused by employer unfair labor practices and strikes over economic issues is that in the latter case strikers who have been permanently replaced need not be reinstated with backpay, whereas unfair labor practice strikers must be reinstated if they have so applied, even if it means the discharge of their replacements.

III.

OTHER ALLEGED UNFAIR LABOR PRACTICES NOT INVOLVED IN THE CAUSATION OR PROLONGATION OF STRIKE

There were other subsidiary issues raised by the General Counsel in his amended complaint. None of these items, which will be discussed *seriatim* below, was found to have caused or prolonged the strike (App. 46-47). Hence none of these matters can support a reinstatement or backpay order.

1. Wage Survey Data

The Trial Examiner found independently that "the Company further violated Section 8(a)(5) of the Act by refusing to comply with the Union's requests for area wage survey data" (App. 45). The Board had to modify this obviously erroneous finding since the record clearly showed that the Company had furnished the Union the wage survey information that it sought. The Board found that "the 2 months delay in transmitting such information was unreasonable and therefore violative of Section 8(a)(5) of the Act" (App. 58).

The record shows that on January 25, 1967 the Company made a wage offer to the Union to increase the rates for four job classifications and that this proposal was

based on "some recent wage adjustments in the area" (App. 165).

On May 31, 1967, some *four months* after the offer was made and three months after the strike began, the Union sent the Company a letter stating, *inter alia*:

"Please send me the information concerning the Area Wage Rate Study made by the Company which prompted the offer of raises for employees of the following scheduled jobs: Electric Furnace, Pattern Makers, Machinists and Maintenance Mechanics." (App. 148).

The next bargaining session was not until August 7, 1967. Right after that session the Union sent a letter to the Company reiterating its request for the information (App. 145-146). On August 15, 1967 the Company furnished the Union the information it sought (App. 74-77).

The Board claims in these circumstances that a two-month delay in forwarding the wage survey information constituted a violation of Section 8(a)(5). This finding overlooks the fact that the Union waited four months to make the request; that no bargaining sessions had taken place after May 31, 1967 until August 7, 1967; that there was a complete lack of any urgency in furnishing this information; and finally that when the request was reiterated on August 8, 1967 it was promptly complied with on August 15, 1967.

In any event it is to be noted that the Trial Examiner and Board found "no connection" between this alleged unfair labor practice and the duration of the strike (App. 46).

2. Names, Classifications and Rates of Pay of Striker Replacements

In the same letter of May 31, 1967 requesting area wage survey information, the Union stated:

"Reports have reached me that the above named company is presently paying certain strike breakers at

rates of pay higher than those paid striking employees who performed the same work prior to the strike.

"Please forward me the names, job titles, and rates of pay for each employee of the bargaining unit who is presently employed" (App. 139-140).

On July 27, 1967—some ten days after it officially terminated the strike—the Union reiterated this request (App. 142-143). On July 31, 1967 the Company wrote stating:

"[W]e have been unable to find any instance in which any current employee is receiving any rate in excess of the rate for the job the strikers received before they participated in the strike." (App. 144)

On August 8, 1967, after the bargaining on August 7, 1967 the Union wrote to the Company again requesting:

"1) The names and rate of pay of each employee presently at work, along with the job to which they are assigned. I made this request because of substantial reports that striker replacements are being paid more in some instances than were the strikers who were replaced." (App. 146).

The Company responded on August 15, 1967 reiterating the position it took in the July 31, 1967 letter that no striker replacements were receiving rates of pay higher than the striking employees received prior to the strike. The letter offered to supply such information to any striker replacement thought by the Union to be paid more than the striker prior to the strike. In addition, the letter of August 15, 1967 continued:

"In view of the fact that we had a large number of instances involving violence and intimidation by strikers against employees working, we are hesitant to furnish the names of employees to you for this reason." (App. 75)

The Trial Examiner found "nothing improper" in the Company's conduct in this regard (App. 45). The Board,

however, reversed the Trial Examiner on this point holding that:

"Absent more positive evidence of employee harassment, the Company was not relieved of its obligation to furnish such information and its refusal to do so is an additional violation of Section 8(a)(5)" (App. 59).

The Board thus ducked the primary reason why the Company declined to give the Union the information it sought. Inasmuch as no striker replacement was receiving a rate of pay in excess of what the striker was receiving before the strike, the information sought by the Union was irrelevant to its stated purpose. Moreover, the Company offered to give such information as to any striker replacement whom the Union believed to be receiving the higher rate. The Union never followed this up, even though it professed to have "substantial reports" of such instances.

Secondly, the Board's decision places an unfair burden on a Company to make an affirmative showing of Union misconduct before it can exercise the simple prudence represented by withholding the names of striker replacements from a striking union. The rule of *Webster Outdoor Advertising Co.*, 170 NLRB No. 144, 67 LRRM 1589 (1968), authorizing a refusal to disclose to the striking Union the names of striker replacements should not be limited to instances where antecedent threats and harassments of replacements have been proved. The rule sought by the Board in this case would require that the employer have proof that the harassments have occurred before it could afford the replacements the simple protection of confidentiality. Such a rule would be self-defeating.

In addition, the Company attempted to introduce evidence of the violence that marred this strike, but was prevented from doing so by the Trial Examiner, who found that:

"If there is a question of misconduct, it would go to the issue of reinstatement, I do not think it is before us at the present time" (Tr. 112).

Despite this ruling, the Union witness Edwards admitted that during the strike some six strikers were convicted of strike misconduct (App. 500). Contrary to the Board's decision, therefore, there was evidence of striker misconduct in the record.

As in the case of the wage survey information, the Board found no connection between this alleged unfair labor practice and the duration of the strike (App. 58-59).

3. The Alleged Promises of Wage Increases for Continuing To Work During the Strike

The Trial Examiner and Board found that the Company violated Section 8(a)(1) of the Act through the alleged conduct of its supervisor George Peacock on the day the strike began in promising employees who chose to work that he would give them a "dime" raise.

The Trial Examiner and Board also found, however, that this alleged incident neither caused nor prolonged the strike (App. 46).

The finding that such a promise was made was based on the testimony of two employees—Alexander Brown and Elijah Fishbourne (App. 262-266; 370-372). Peacock unequivocally denied making such a promise (App. 361-362). Following his indiscriminate practice of crediting all the Union witnesses and discrediting all the Company witnesses, the Trial Examiner failed even to allude to the fact that there was a conflict in the evidence.

The employees' testimony is, nevertheless, inherently incredible. With a Union demand of a 20¢ per hour raise on the table and a Company offer of 8¢ per hour, it is hard to imagine how a "dime" raise would have accomplished the aim attributed to the Company by the Board—that is to convince persons who would have otherwise gone on strike to stay in. It is an incredibly weak promise of benefit for remaining at work during the strike.

In addition, the record fails to show any wage increases for employees who chose to work during the strike until October 2, 1967. The Board would have this Court believe that the Company promised the nonstriking employees a "dime" increase on February 28, 1967, but gave them nothing at all until October 2, 1967—seven months later—when it gave them 8¢. That simply strains credulity. Even the Trial Examiner found that:

"The promise to a few nonstrikers of wage increases well below those sought by the Union would hardly tend to prolong the strike." (App. 46)

4. Alleged Unilateral Wage Increase on October 2, 1967

The Trial Examiner and Board found that the Company independently violated Section 8(a)(5) by its alleged "unilateral" wage increase on October 2, 1967.

This finding depends wholly on the finding that the Company violated Section 8(a)(5) of the Act by its conduct of the bargaining and the negotiations. The evidence is undisputed that the October 2, 1967 increases were "exactly" the same as the wage increases last offered to the Union in negotiations (App. 400); that the last bargaining session between the parties prior to the increase was on August 7, 1967; that the parties were at an impasse in the bargaining by that date; and that the Union did not seek further bargaining after that date.

Under well defined precedents, an employer may "unilaterally" put into effect his last wage offer to the Union after the parties have reached an impasse in bargaining. *NLRB v. Crompton-Highland Mills*, 337 U.S. 217.

The Board argues in its brief that there is no "legally cognizable" impasse in this situation because of the Board's finding that the Company bargained in bad faith with the Union in the negotiations. *Industrial Union of Marine & Shipbuilding Workers of America, AFL-CIO v. NLRB*, 320 F.2d 615, 621 (3rd Cir. 1963), *cert. den.*, 375 U.S. 984.

If, as demonstrated in Part I of this argument the Company did not violate Section 8(a)(5) in the course of its negotiations with the Union, the legal underpinning of the "unilateral increase" complaint must also fall. The applicable law is stated succinctly in *Fetzer Television, Inc. v. NLRB*, 317 F.2d 420 (6th Cir. 1963):

"Since petitioner did not fail to bargain in good faith at the eight bargaining sessions the impasse that resulted was a bona fide one. This being so, the unilateral change in method of payment effected by the petitioner *after* the impasse was reached does not evidence a failure to bargain in good faith."

The charge must fail for the independent reason that the wage increase was not "unilateral" as a matter of fact. The undisputed evidence showed that approximately a month prior to the increase of October 2, 1967, the Company announced via its bulletin boards its proposed intention to put the last wage increase offered to the Union into effect. Thus the Union was put on notice of the proposed Company action. The record fails to disclose any Union attempt to bargain with the Company over the proposed action it publicly announced on its bulletin boards. Thus, apart even from the impasse issue, the Company's action on October 2, 1967 was not violative of Section 8(a)(5) of the Act.

IV.

THIS COURT HAS ALREADY RULED THAT THE UNION'S REQUEST FOR RELIEF IS NOT WARRANTED UNDER THE ACT

For reasons expressed on pages 31-33 of the Board's brief, the Union argument that the backpay period should commence on March 16 and 17, 1967 when the strikers were notified of their permanent replacement and before any request for reinstatement at all should be denied. The Union argument seeks "backpay" for strikers who chose

to continue their strike and before they gave any positive indication that they were willing to resume work. Such a rule would spell the end of the *Mackay* rule that an employer may with impunity permanently replace striking employees since such an employer would always run the risk of having to pay both the replacement and the strikers.

In addition to the cases cited in the Board's brief, this Court has recently had occasion to deny a similar Union request that a Board backpay order be dated before a striker's application for reinstatement. On April 7, 1970 this Court held in *Teamsters Local 992 v. NLRB*, — F.2d —, 73 LRRM 2924 (D.C. Cir. 1970), that:

"[I]t suffices to note that the traditional remedy of the Board in the absence of special circumstances has been to award back pay from the date that employees request reinstatement. That approach has already been approved by this court . . ."

CONCLUSION

As stated above, the Board concluded (1) that the Company bargained in bad faith during contract negotiations with the Union and (2) that this alleged unfair labor practice caused the strike starting February 28, 1967.

Following from these two conclusions, the Board held that the strikers were unfair labor practice strikers and, therefore, entitled to full reinstatement five days after individual application therefor, regardless of whether replacements had been hired to take their jobs. *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270 (1956).

But as shown in Parts I and II of this Argument, the Company did not bargain in bad faith with the Union, and, in any case, the strike was over economic issues, not alleged unfair labor practices. If, as the Company contends, the strike is an economic one, caused by a simple failure to agree on the terms and conditions of a contract, the Company was under no obligation to discharge permanent re-

placements to make room for returning strikers. *NLRB v. Mackay Radio & Telegraph Co.*, 304 U.S. 333 (1938); *NLRB v. Fleetwood Trailer Co.*, 389 U.S. 375 (1967); *Laidlaw Corp. v. NLRB*, 414 F. 2d 99 (7th Cir. 1969), cert. den., — U.S. —, 73 LRRM 2537 (1970).

Since the Board's conclusions were premised on contrary conclusions, the Board's reinstatement with back pay order cannot be enforced.

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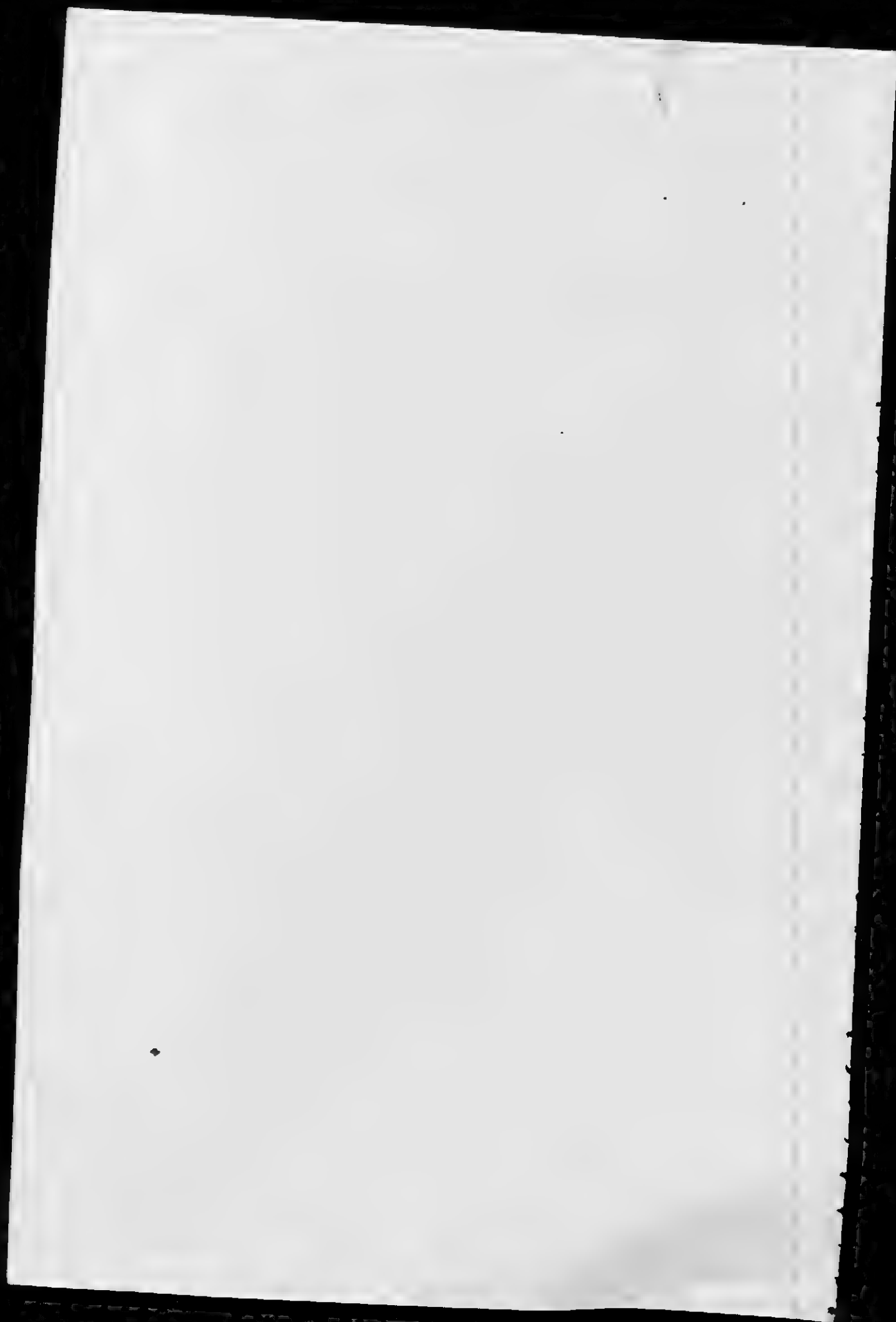
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Nos. 22,872 and 23,010

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,872

UNITED STEELWORKERS OF AMERICA, AFL-CIO, Petitioner

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

No. 23,010

NATIONAL LABOR RELATIONS BOARD, Petitioner

v.

**FLORIDA MACHINE & FOUNDRY COMPANY and
FLECO CORPORATION, Respondent**

*On Petition for Review and Application for Enforcement
of an Order of the National Labor Relations Board*

REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

United States Court of Appeals
for the District of Columbia Circuit

FILED JUN 8 1970

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IN THE
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*On Petition for Review and Application for Enforcement
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REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

The Section 8(a)(5) violation found in this case was not that the Company made insufficient concessions at the bargaining table, or that its proposals were so restrictive that to insist upon them constituted a *per se* refusal to bargain. The instant case is, therefore, unlike *N.L.R.B. v. American National Insurance Co.*, 343 U.S. 395 (1952), upon which the Company relies (Br. 19-22), where the Board urged a "theory quite apart from the test of good faith bargaining prescribed in Section 8(d) of the Act, a theory that respondent's bargaining for a management functions clause as

a counterproposal to the Union's demand for unlimited arbitration was, 'per se', a violation of the Act." 343 U.S. at 404-405. The Board there took the "position that employers subject to the Act must agree to include in any labor agreement provisions establishing fixed standards for * * * condition[s] of employment." 343 U.S. at 408. The Board's order required the Company to cease and desist from "* * * insisting as a condition of agreement, that the said Union agree to a provision whereby the respondent reserves to itself the right to take unilateral action with respect to * * * [working conditions]". 343 U.S. at 400, n. 5. The Court, rejecting the Board's position, found that its action was tantamount to "pass[ing] upon the desirability of the substantive terms of [a] labor agreement * * *." 343 U.S. at 408-409.¹

There was no similar specific finding in the instant case that the Company's proposals — even its broad management functions proposal² — could not lawfully be insisted upon as a condition of agreement. The Board's order does not require the Company to abandon any particular bargaining position; nor does it require the Company to make any concession to the Union. All it requires is that the Company's position be maintained in good faith. Although the Examiner did find that the Company's restrictive management functions proposal and its overall bargaining stance were

¹The Supreme Court's recent decision in *H. K. Porter Co. v. N.L.R.B.*, 397 U.S. 99, (1970), does not "redefine" (Co. Br. 19) the law of surface bargaining; it holds that in light of the settled principles of *American National Insurance*, the Board cannot compel an employer or union to agree to a substantive term of a contract—in that case, a dues checkoff provision—as a remedy for a refusal to bargain in good faith. The Board has issued no such order in the instant case.

²Under the Company's proposal, a broad range of Company actions vitally affecting employee working conditions were not only reserved to management and exempt from arbitration, as in *American National Insurance*; the proposed contract also provided that such actions — which included the abolition of a man's job and his summary discharge — could not even be the subject of a grievance. (A. 29, 42).

part of a "purposeful strategy to make bargaining futile or fail" (A. 44), it was the Company's approach to bargaining and not its proposals which the Board found wanting.

There is, of course, as the Supreme Court has observed, "[o]bvious * * * tension between the principle that parties need not contract on any specific terms and a practical enforcement of the principle that they are bound to deal with each other in a serious attempt to resolve differences and reach a common ground. * * *" *N.L.R.B. v. Insurance Agents' International Union*, 361 U.S. 477, 486 (1960). It plainly does not follow, however, contrary to the Company's apparent contention (Br. 22-28), that the Board must close its eyes to the nature of a party's proposals at the bargaining table when determining his good faith or want of good faith, for as this court has correctly observed, the "course of negotiations" is among the "raw facts" upon which the Board must rely in reaching such a determination. *Local 833, UAW v. N.L.R.B.*, 112 App. D.C. 107, 300 F.2d 699, 706 (C.A.D.C., 1962), cert. denied, 370 U.S. 911 (quoting from *Frankfurter, J.*, concurring in *N.L.R.B. v. Truitt Mfg. Co.*, 351 U.S. 149, 155 (1956)). Indeed, the Supreme Court's decision in *American National Insurance* itself meets this contention, for the Court clearly indicated (343 U.S. at 409) that while a *per se* approach to the management functions clause was impermissible, the Board was not foreclosed from finding that in a particular case a management functions clause had been employed as a means of evading the obligation to bargain on good faith. As the Court explained (343 U.S. at 409):

Any fears the Board may entertain that use of management functions clauses will lead to evasion of an employer's duty to bargain collectively as to "rates of pay, wages, hours and conditions of employment" do not justify condemning all bargaining for management function clauses covering any "condition of employment" as *per se* violations of the

Act. The duty to bargain collectively is to be enforced by application of the good faith bargaining standards of Section 8(d) to the facts of each case rather than by prohibiting all employers in every industry from bargaining for management functions clauses altogether.

As the First Circuit has stated in somewhat different terms, it is "true * * * that the Board may not 'sit in judgment upon the substantive terms of collective bargaining agreements' [quoting from *American National Insurance*, 343 U.S. at 404]. But at the same time it seems clear that if the Board is not to be blinded by empty talk and by the mere surface motions of collective bargaining, it must take some cognizance of the reasonableness of the positions taken by an employer in the course of bargaining negotiations. * * *" *N.L.R.B. v. Reed & Prince Mfg. Co.*, 205 F.2d 131 (C.A. 1, 1953) cert. den., 346 U.S. 887. Accord: *N.L.R.B. v. Hall Distributors*, 341 F.2d 359, 362 (C.A. 10, 1965)³

Of course, Section 8(d) of the Act "prohibits the Board from relying on a refusal to agree as the sole evidence of bad faith bargaining * * *" (*H. K. Porter Co. v. N.L.R.B.*, *supra*, 397 U.S. at 108); and the Company asserts that what the Board did here was set itself up as the judge of what is a fair contract proposal even though its Section 8(a)(5) finding (A. 40) was couched in terms of the Company's state of mind at the bargaining table. Such a contention is clearly without merit in this case, however, for there is substantial record support — evidence not only of what the Company proposed and bargained for but of other conduct evidencing a negative attitude toward negotiations — for

³Compare *N.L.R.B. v. Insurance Agents' International Union*, *supra*, 361 U.S. at 479-480, where the Supreme Court accepted a stenographic record of discussions at the bargaining table as evidence of good faith bargaining.

the Board's finding that the Company did not approach bargaining with a "sincerity of effort and intention to arrive at and consummate an agreement * * *" *N.L.R.B. v. National Shoes, Inc.*, 208 F.2d 688, 691 (C.A. 2, 1953). There are, for example, "antecedent events explaining behavior at the bargaining table" (*Local 833, UAW v. N.L.R.B. supra*, 112 App. D.C. at 114, 300 F.2d at 706) in the form of repeated Company warnings — less than three months before bargaining commenced — that the Company would not sign a union contract or permit a union in the plant.⁴ There is evidence of dilatory tactics at the bargaining table: Company counsel avoided an early resumption of bargaining on one occasion by asserting that his schedule was full; on another by insisting over the Union's vigorous objection upon having the Company's insurance man present; and on another by simply not honoring an obligation to contact the Union representative about the scheduling of the next session — conduct which the Company characterizes as "utter triviality" (Br. 34) but which the Board could surely view otherwise. Although the Company now ascribes the 21-day lapse between the first and second session to the Union's "outstanding request for [wage] information" and the "need to propose a complete

⁴The Company's contention (Br. 16, 42) that employee Withers "ultimately" admitted that his account of President Russell's speech was hearsay overlooks the fact that Withers specifically reaffirmed later in his testimony that he personally heard Russell tell the employers that "we wouldn't have a union" (A. 253).

The Company also appears to contend (Br. 40) that Section 10(b) of Act precludes the Board from considering Company conduct antedating the six-month limitations period as shedding light upon its state of mind at the bargaining table. This contention is plainly without merit. See, in addition to the cases cited at pp. 19-20 of our main brief, *Local 833, UAW v. N.L.R.B. supra*, 112 App. D. C. at 114, 300 F.2d at 706; *United Packinghouse, Food and Allied Workers v. N.L.R.B. (Farmers' Cooperative Compress)*, ___ App. D.C. ___, 416 F.2d 1126, 1131, n. 8 (C.A.D.C. 1969), cert. den. *sub nom, Farmers Cooperative Compress v. United Packinghouse Workers*, 396 U.S. 903.

new contract proposal which would be responsive to the Union's proposal as explained at the [first session]", the fact is that the Union had submitted its contract proposal to the Company long before the first session ; that the Company's counterproposal was completely unresponsive to the union proposal "as explained" at the first session; and that the reasons now advanced for the delay in scheduling the second meeting were not the reasons proffered by Company counsel when pressed by the Union for an early resumption of meetings.⁵ When the employees later struck in protest against the Company's bargaining tactics,⁶ Plant Superintendent Peacock, who earlier had warned the entire night shift that a union would "never" be "brought in" so long as he had "something to do with the plant" — remarks which the Company now dismisses (Br. 39) as mere campaign oratory — unlawfully offered a 10-cent pay raise to two small groups of employees in return for their staying on the job during the strike.⁷

⁵ According to the uncontradicted testimony of Union representative Edwards, Company counsel asserted that he had a "busy schedule" and that the "earliest date he could meet with us would be December the 19th" (A. 423).

⁶ The Company erroneously asserts that there is no evidence to support the Board's finding that the employees struck in protest over the Company's refusal to bargain. Thus, union representative Edwards testified without contradiction that when the employees voted down the Company's proposed contract in late February, they also resolved to strike "on the ground that the Company had not bargained in good faith" (A. 492-493).

⁷ The Company contends that the testimony of two employees to this effect is "incredible" because the Company was already offering an 8¢ increase at the bargaining table. There is nothing incredible, however, about an implied promise of an immediate special reward, however modest, for not supporting a strike. Of course, the fact — if indeed it is a fact — that such a reward was not actually conferred by the Company hardly proves that no such inducement was offered, particularly in light of undisputed evidence that at least two of the employees solicited that night promptly went out on strike the next morning (A. 371, 264).

Thereafter, the Company first ignored and then refused the Union's request for a schedule of wage rates paid to striker replacements; and a request for an area wage survey, which the Company had itself relied upon in formulating a wage offer for four job classifications, was not honored until two and one-half months later. While this conduct itself was found to constitute a violation of Section 8(a)(5), such action also sheds light on the Company's overall approach to bargaining. Cf. *Local 833, UAW v. N.L.R.B.*, *supra*, 112 App. D.C. at 114, 300 F.2d at 706. Although the Company contends (Br. 47) that there was no "urgency" in supplying the area wage survey information because the Union did not request such information until four months after the Company made its wage proposal, the Union's letter of May 31, 1967, indicates that the wage issue had been brought to a head by reports reaching the Union that striker replacements were then receiving premium rates (A. 139). It was hardly surprising, therefore, that the Union should, on the occasion of its requesting a schedule of current wage rates, also request substantiation of the Company's wage position at the bargaining table. No rule of law or reason dictates that the Union, by virtue of the timing of its request, should be deemed to have waived its right to a prompt Company response; and the record indicates that the Company could readily have complied since the requested wage survey information was in the hands of Company counsel as early as mid-June. The Company has not explained why this data was not transmitted to the Union until two months later, after the Union had twice more requested it.

The Company took the same negative approach to the Union's request for wage schedules in effect during the strike. No action was taken at all for some two months after the initial request. Then, in letters dated

July 31 and August 15, the Company took the position that the Union would have to take the Company's word for it that there was no instance of a striker replacement receiving premium pay; and the Company still asserts (Br. 49) that the "primary reason" why it refused to furnish this information was that "no striker replacement was receiving a rate of pay in excess of what the striker was receiving before the strike * * *". This reasoning, of course, assumes the premise which the Union sought to examine for itself, for its request was not for a Company statement on replacement pay but for the data upon which an independent comparison could be made. Although the Company again cites striker harassment as a basis for its refusal to supply the names of replacements, the facts are that the Company not only failed to supply the union upon request with the names of employees who allegedly engaged in harassment (A. 145, 74) and failed to put on evidence of employee harassment as a defense to this allegation in the complaint;⁸ it failed even to put its own officials on the stand to testify that the Company had received reports of striker misconduct and feared that compliance with the Union's request would jeopardize the safety of non-strikers. Finally, although the Trial Examiner found that the promises of wage increases to non-strikers and the refusal to supply information to the Union did not prolong the strike, he did specifically find that "these unfair labor practices bear upon the Company's state of mind during the bargaining negotiations" (A. 46).

For all of the foregoing reasons, as well as the reasons set forth in our opening brief, the Board could properly find that the Company's ada-

⁸At one point the Company sought to introduce evidence of strike misconduct to show that certain strikers were not entitled to reinstatement. See *Local 833, UAW v. N.L.R.B.*, *supra*, 112 App. D.C. at 115; 300 F.2d at 207. Company counsel agreed with the Trial Examiner's ruling, however, that such issues be left to the compliance stage of this proceeding. This colloquy plainly does not show, as the Company's brief

footnote continues

mant insistence upon bargaining proposals which gave the employees little and took away much, was but part of an overall strategy to frustrate bargaining rather than "deal with [the Union] in a serious attempt to resolve differences and reach a common ground" (*N.L.R.B. v. Insurance Agents' International Union, supra*, 361 U.S. at 486).⁹

CONCLUSION

We submit that the Court should issue a judgment enforcing the Board's order in full.

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would suggest (Br. 49-50) that the Company was not permitted to defend its refusal to supply wage information by adducing evidence of striker harassment. (The pertinent portion of the record, not printed in the Appendix, is reproduced *infra* as an appendix to this brief).

⁹ It was within the Trial Examiner's province to find (A. 42) that the Company made no concessions to the Union which would compensate the employees for the Section 7 rights they were to relinquish under the Company's proposed contract (Co. Br. 31). In cases such as these the Board and the Courts often assess the significance of concessions in an overall bargaining context; indeed, the Company itself relies (Br. 26) upon a recent Fifth Circuit case, *N.L.R.B. v. Laney & Duke Storage Warehouse Co.*, ____ F.2d ____, 73 LRRM 2962 (April 7, 1970), where this was in effect done, the Court affirming a special master's finding that an employer charged with surface bargaining had made "major" concessions. From an evidentiary standpoint, moreover, the Examiner's finding in the instant case was amply supported by evidence of the proposals which the Company insisted upon as *quid pro quo* for its offer of an 8¢ wage increase. See our main brief, pp. 24-25.

APPENDIX

Excepts from Transcript in Case
12-CA-3831, 3915

[111] Q. (By Mr. Bowden) Were you arrested in connection with your activities during the strike.

MR. MATTSON: I object.

TRIAL EXAMINER: Your basis for the objection?

MR. MATTSON: If the Court will permit, both that the question itself as to an arrest is irrelevant; and secondly, I do not think it is pertinent to any issue that has been presented at this time.

MR. BOWDEN: Your Honor, I will make this observation on the record - and, I have no desire to litigate this [112] question here, but I want the record to show that it is the Company's position with reference to this man that he was engaged in violence while on strike, and is not eligible for reinstatement.

Now, whether that is a compliance question or whether that is to be litigated here, it does not make any difference to me, but I just want it on the record.

MR. MATTSON: Objection - and move that the statement be stricken from the record.

TRIAL EXAMINER: The statement may stand on the record for whatever value it may have.

MR. MATTSON: I understand from -

TRIAL EXAMINER: Are you making that statement to attack the witness' credibility?

MR. BOWDEN: No, I am - there is a certain amount of credibility, surely.

TRIAL EXAMINER: If there is a question of misconduct, it would go to the issue of reinstatement, I do not think that is before us at the present time.

MR. BOWDEN: Well—

TRIAL EXAMINER: It is your position that this man never did apply for reinstatement - he never made a personal application. He was never sent a job offer, was he?

MR. BOWDEN: No, he was not.

TRIAL EXAMINER: So, the statement you have made goes to [113] matters that would be proper if there should be supplementary proceedings.

I am going to grant the General Counsel's motion—

MR. BOWDEN: I would just as soon not litigate that question here, Your Honor—

TRIAL EXAMINER: Well, it is on the record that you have made the statement—

MR. BOWDEN: Well, I want to be sure that we were not being foreclosed from raising this question.

TRIAL EXAMINER: It is on the record.

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BRIEF FOR RESPONDENT FLORIDA MACHINE
FOUNDRY COMPANY AND FLECO CORPORATION

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,010

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

FILED
JAN 23 1951

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

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FLECO CORPORATION, Respondent.

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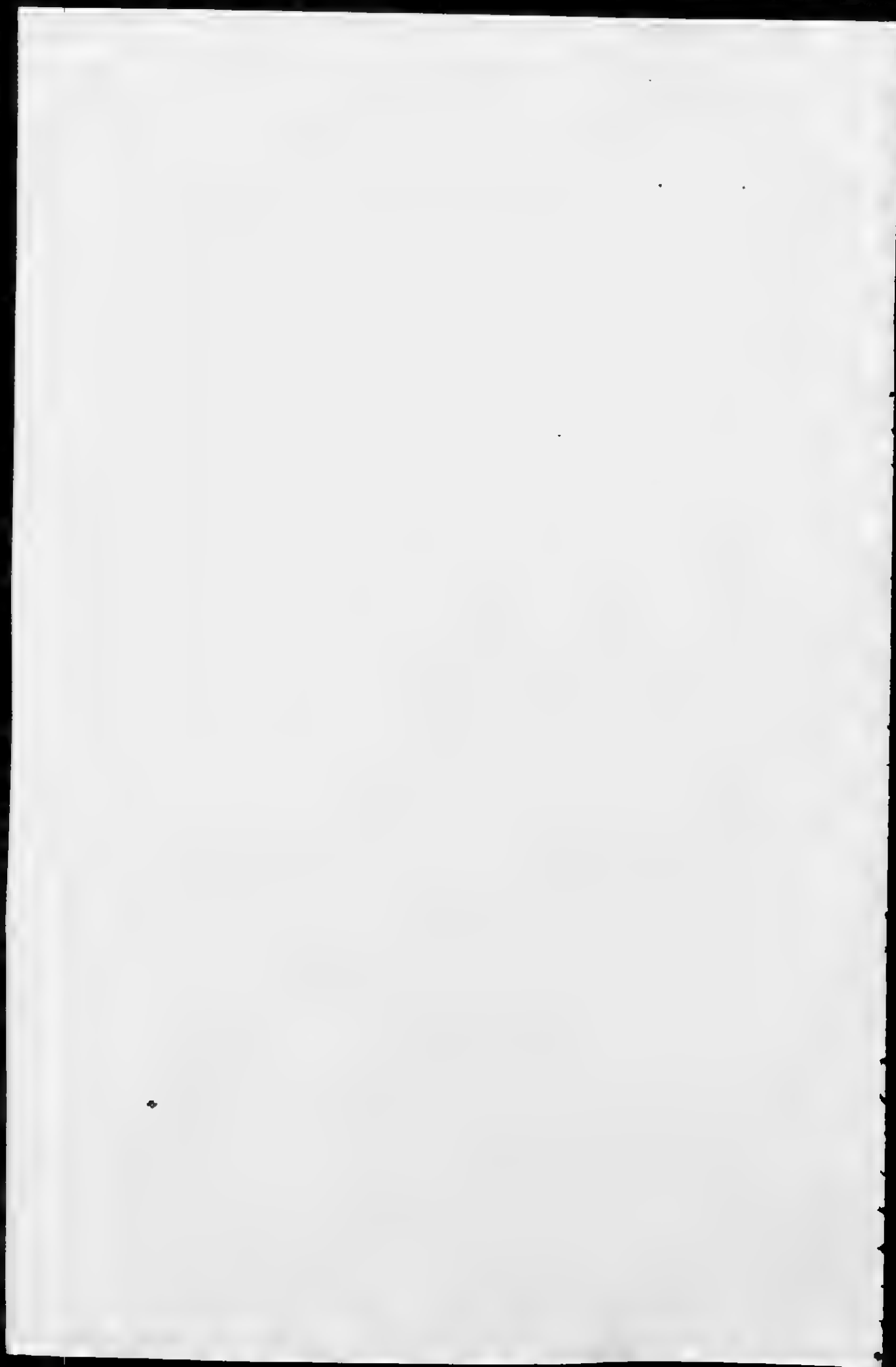


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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,010

NATIONAL LABOR RELATIONS BOARD, *Petitioner,*

v.

FLORIDA MACHINE & FOUNDRY COMPANY and
FLECO CORPORATION, *Respondent.*

On Petition for Review and Cross-Applcation for Enforcement
of an Order of the National Labor Relations Board

BRIEF FOR RESPONDENT FLORIDA MACHINE &
FOUNDRY COMPANY AND FLECO CORPORATION

COUNTERSTATEMENT OF THE ISSUES PRESENTED
FOR REVIEW

1. Whether or not the Board has "re-evaluated the entire controversy" and otherwise complied with the terms of the Court's Remand.
2. Whether or not the factors used by the Board in its Supplemental Decision can support a finding of bad faith in bargaining and a further finding that the strike was caused by Company unfair labor practices.

In accordance with Rule 8(d) of the General Rules of this Court the Company states that these consolidated cases were previously before the Court (Chief Judge Bazelon, Circuit Judge Tamm and District Judge Matthews) under the same caption and docket numbers.

COUNTERSTATEMENT OF THE CASE

A. The Board's Initial Opinion

This is the second time this case has been before the Court. The Board initially found, in agreement with the Trial Examiner, that the Company had violated 8(a)(5) of the Act by "failing to bargain in good faith with the Union." The Board also found that these alleged unfair labor practices caused a strike. The Board did not further articulate the reasons for these conclusions, but adopted without comment the Trial Examiner's finding that "the Company proposed and insisted throughout the negotiations that the Union accept contract clauses which drastically curtailed the Union's representation rights." (A. 41).¹

B. The Opinion of the Court Remanding the Case Back to the Board

After hearing on appeal, this Court returned the case to the Board for further findings. The Court observed that it had detected "several misconceptions entertained by the Board as to its proper role" in the case which could have "infected" its decision. The Court pointed out that, under the prevailing Supreme Court precedents of *H. K. Porter Co. v. NLRB*, 397 U.S. 99 (1970), and *NLRB v. American National Insurance Co.*, 343 U.S. 395 (1952), the Board was without power to require a party to make concessions or agree to any proposals. The Court held:

"It appears, however, that this was the effect of the Board's adoption of the Examiner's finding that

¹ "A" references are to the Appendix printed for the original proceedings before this Court.

certain contract terms offered by the Employer were so inherently obnoxious to the best interests of the Union as to constitute evidence of bad faith and an unwillingness to come to agreement." *United Steelworkers of America, AFL-CIO v. NLRB*, — U.S. App. D.C. —, 441 F.2d 1005, 1009 (1970).

The Court remanded the case to the Board with certain specific instructions. The Board was directed to "re-evaluate the entire controversy on remand." The Board was further instructed to determine whether, assuming a finding of bad faith bargaining, the resulting strike was an economic or unfair labor practice strike, since, the Court observed:

" . . . the conclusion that the strike was not an economic strike but rather was an unfair labor practice strike may or may not stand up after the Board's reconsideration of the issues . . ." *Id.* at 1012.

C. The Board's Supplemental Decision and Order

On May 28, 1971, the Board issued its Supplemental Decision and Order. 190 NLRB No. 109, 77 LRRM 1272 (1971). We respectfully submit that the opinion was not responsive to the remand. This Court had asked for a "re-evaluation of the entire controversy." No such re-evaluation was forthcoming. The Board simply listed, without explanation, in a single paragraph, five "factors" which in combination warranted the conclusion of bad faith bargaining:

1. Unspecified Company contract proposals "which would have drastically curtailed the Union's representation rights."²
2. Alleged delays in scheduling bargaining sessions.
3. Alleged refusals and delays in supplying information to the Union.

² The only contract proposal specifically alluded to was the Company's management rights proposal.

4. Alleged promises of wage increases to employees who did not support the strike.
5. Alleged Company opposition to the Union in the preceding election campaign.

190 NLRB No. 109, 77 LBRM 1272, 1273 (1971).

We show below that the Board's Supplemental Opinion is unresponsive to this Court's remand and indeed perpetuates the same conceptual errors as caused the remand. We also demonstrate that the "factors" on which the Board now relies without supporting analysis individually and collectively fail to sustain the Board's finding of bad faith bargaining and in turn cannot support the further conclusion that the strike was caused by the Company's unfair labor practices.

ARGUMENT

I.

THE BOARD'S SUPPLEMENTAL DECISION DOES NOT CONFORM TO THE TERMS OF THE COURT'S REMAND

This Court's remand required that the Board make specific and detailed findings on the issues of Company bargaining and its relationship to the strike of February 28. This the Board has failed to do. The Board's Supplemental Opinion merely pours "old wine in new bottles" and does not so much as attempt to rationalize its conclusions in terms of either the law or the facts.

A. The Legal Framework

This case is governed by the principles set forth by this Court in its opinion remanding the proceedings back to the Board for further articulation and analysis. The Court reminded the Board specifically of the Supreme Court's warning that the Board could not attempt to dictate the terms of a collective bargaining settlement or compel parties to negotiations to agree to certain terms or make concessions. *H. K. Porter v. NLRB*, 397 U.S. 99, 103-104

(1970); *NLRB v. American National Insurance Co.*, 343 U.S. 395, 404 (1952). The Court also admonished the Board to refrain from reaching conclusions by speculation, without evidence. It requested the Board to reconsider the entire matter, including the question whether, in the Board's view, the strike was caused by Company unfair labor practices. The Board's Supplemental Opinion, however, ignores and glosses over these issues which the Court required to be re-evaluated.³

B. The Board Failed To "Re-evaluate the Entire Controversy" as Required by This Court's Opinion

One of the specific requirements which this Court imposed upon the Board on remand was to "re-evaluate the entire controversy" in light of the Court's opinion. The Board has simply ignored this request.

The Board's Supplemental Opinion itself consists primarily of a rehash of the history of the proceeding. It devotes only one paragraph to a genuine "supplemental opinion". That paragraph, in turn, lists five "factors" the Board now finds evidenced bad faith. There is no discussion or analysis of these factors, or of the record evidence pertaining to them.

This perfunctory treatment leaves both the Court and the parties in the dark as to the Board's rationale. The whole purpose of the Court's opinion, we believe, was to have the Board take another look at the entire controversy and give the Court the benefit of its analysis and articulation of the Board's view of the issues; an analysis and articulation that was completely lacking in the Board's

³ As another Court of Appeals has remarked,

"In our previous disposition of this case we requested findings from the Board. The response which we received was a litany, reciting conclusions by rote without factual explication. We believe that the questions involved in this area of labor law are far too important for such formalistic and perfunctory treatment." *NLEB v. American Cable Systems, Inc.*, 427 F.2d 446, 449 (C.A. 5, 1970), cert. denied, 400 U.S. 957.

first opinion which adopted *pro forma* the Examiner's conclusions in a one line paragraph (A. 58). The Court underscored its concern by supplying an exhaustive analysis of its own as to why the Board's treatment of the Company's wage offer was inadequate. The Board, the Court said, was not allowed "to speculate" on conclusions without evidence and without a careful weighing of the evidence.

In its supplemental opinion, the Board lists five conclusionary findings as forming the foundation of its conclusion that the Company bargained in bad faith. Three of these findings [(1) pre-election statements, (2) failure to meet with reasonable frequency, and (3) contract proposals curtailing Union representation rights] are borrowed from similar findings of the Trial Examiner which the Examiner found caused the strike. The two remaining findings [(1) promises of wage increases to non-strikers, and (2) failure to supply wage data] were specifically held by the Examiner and originally by the Board not to have contributed to or prolonged the strike.

The Board now lumps all five factors and concludes from them that the Company bargained in bad faith. The Board, however, does not discuss or analyze the evidence relating to these factors or any of them. Nor does the Board consider or discuss the effect of any of them in terms of causal relationship to the strike.

The Board's opinion concludes with the totally uninformative rubric that its bad faith inference is "based on the totality of the Employer's position, and not his position on any single contract provision."

The Court's opinion recognized the complexities involved in determining whether or not the Company was guilty of bad faith bargaining and whether the Company committed unfair labor practices which caused the strike. The Board's telescopic and conclusionary finding gives no

recognition to the Court's concerns, nor even attempts to explicate and rationalize its conclusions by reference either to the applicable legal principles or the record facts. The Court is thus left just where it started, without the type of elucidation necessary to allow the Court to exercise its review function, and to determine whether the Board's conclusions comport with established legal principles and are fairly supported by the record; or whether the Board has continued to permit "its view on the merits of the substantive terms at issue between the parties to cloud its judgment of the Employer's good faith." 441 F.2d at 1010.

Indeed, the Board has clearly and patently failed to reconsider the questions presented by the remand opinion.

The Board's Supplemental Opinion reintroduces the same errors which caused the remand in the first place. The Board's initial opinion accepted without comment the Examiner's bad faith conclusion. The major underpinning for that conclusion was the Examiner's view that the Company had failed to make concessions or accept certain terms advanced by the Union (A. 42-44). That underpinning has now been removed by this Court's opinion remanding the case.

Yet the Board's fifth "factor" (alleged insistence on contract proposals which curtail Union representation rights) is a *verbatim* recitation of the Trial Examiner's original finding that the Company insisted "that the Union accept contract clauses which drastically curtailed the Union's representation rights." (77 LRRM at 1273; A. 41). With the major rationale for that Examiner's finding criticised by the Court we are at a loss to see how this "factor" can be supported. The Board provides no explanation. Indeed, by failing to make an explanation while repeating this finding, the wholly justifiable inference is that the Board has refused to accept or apply the legal principles so carefully set out in the Court's opinion, and

continues to condemn without rationalization the Company's substantive bargaining proposals.

The Board's only specific reference is to the Company's management rights proposal. But, just such a management rights proposal, which the Board had also condemned, was upheld as a lawful and proper proposal by the Supreme Court in the *American National Insurance* case, 343 U.S. 395 (1952), a leading decision cited by the Court in its decision on remand.

In this and many other respects, the Board has perpetuated its original errors.

C. The Board Failed To Determine Whether the Strike Was an Economic or an Unfair Labor Practice Strike

One of the major issues in this case is whether the February 28, 1967 strike was in fact *caused* by any unfair labor practices by the Company. A finding of causation between any unfair labor practices and the strike would require the Company to reinstate strikers with back wages, even if this meant discharging their replacements.

The Trial Examiner found that "the strike which began on the night of February 28, 1967 is attributable to the Company's failure to bargain in good faith . . ." (A. 45). This finding of bad faith was based exclusively on events occurring prior to the strike (A. 40-45). He expressly stated that "the Company did not engage in conduct during the strike which prolonged the strike" (A. 47).

The Court in its remand stated "the conclusion that strike was not an economic strike but rather was an unfair labor practice strike may or may not stand up after the Board's reconsideration of the issues already outlined." 441 F.2d at 1012.

The Board's Supplemental Decision simply did not speak to this critical issue.

Far from providing clarification, the Board has further confused the issue. The finding of bad faith is now based

on five factors, two of which occurred after the strike and in no way can be said to have caused the strike, and one of which occurred during the pre-election campaign. Since the supplemental finding of bad faith is based on the totality of the Company's conduct, including all five of the stated factors, the issue of strike causation is left unresolved by the supplemental opinion.

Left unanswered by the Board is whether or not it believes that the three alleged violations which occurred prior to the strike are sufficient by themselves to sustain a finding of bad faith. If not, there can be no basis for a finding that the Company's pre-strike conduct caused the strike.

Even if the Company's pre-strike bargaining is found to have violated § 8(a)(5) in some manner, there still must be substantial evidence that there was a causal relation between the Company's pre-strike unfair labor practices and the strike of February 28, 1967. Apart from the Board's failure to re-evaluate this issue, the Company submits no substantial evidence of such a causal relationship exists in this case.

The rule on strike causation was stated by this Court in *United Steelworkers of America, Local 5571 v. NLRB*, 130 U.S. App. D.C. 369, 372, 401 F.2d 434, 437 (1968), *cert. denied*, 395 U.S. 946. The Court there held that the "question is whether the unfair labor practice was a 'principal cause of the strike'."

The necessity for substantial evidence of strike causation was clearly shown in the case of *Filler Products, Inc. v. NLRB*, 376 F.2d 369 (C.A. 4, 1967). There the Court held that the Board must show by "credible evidence" that the alleged unfair labor practices had a "causal connection with the strike." The Court in that case additionally held that:

"Nor is weight to be given to the fact that the Union, in its telegram to the Company and on its placards,

referred to the strike as a 'strike because of Unfair Labor Practices.' Without credible evidence to support it, it can only be regarded as a self-serving statement warranting no finding of fact by the Board." 376 F.2d at 379.

See also *NLRB v. Scott & Scott*, 245 F.2d 926, 929-930 (C.A. 9, 1957); *Winter Garden Citrus Products Cooperative v. NLRB*, 238 F.2d 128, 129-130 (C.A. 5, 1956).

The evidence upon which the Trial Examiner originally relied in this case to prove strike causation was the same type of self-serving declaration which the Fourth Circuit found insufficient in the *Filler Products* case.

First, there was a statement by one of the Union negotiators that after the last bargaining session before the strike the Union called a meeting with the employees. He testified that at this meeting the Company's last offer was discussed and rejected by the members with the membership then resolving to strike on the ground that the Company had not bargained in good faith (A. 492-493). Second, there was a letter from the same Union negotiator dated after the strike. The letter merely stated that the Union had filed charges against the Company for failure to bargain in good faith and stated that the Union had initiated a strike in support of those charges (A. 127).

It is significant that of the twenty-eight employees who testified for the Union, not one was ever called upon to testify about this Union meeting. The testimony of the Union negotiator as to what was discussed and concluded was not corroborated by any Union record, and no means existed for verifying the accuracy of the Union's self-serving statement. Similarly, the after the fact statement in the Union letter concerning the filing of charges with the Board is clearly the same type of self-serving declaration as was cited in *Filler Products* and can have no real probative value.

Objective analysis of strike causation here indicates that the strike was economic. The Board, in its initial opinion, has already adopted the Trial Examiner's finding that alleged promises of wage increases by a Company agent and purported Company refusals to/and delays in furnishing information, upon which the Board now relies, *inter alia*, as evidence of bad faith, did not cause or prolong the strike (A. 46-47). Presumably, the Supplemental Opinion does not disturb these findings. This leaves the Company's pre-election statements, alleged bargaining session delay, and Company bargaining proposals, which the Board has claimed indicated Company bad faith, as possible reasons behind the Union's strike.

The Company's pre-election statements and alleged bargaining delays could not likely have been motivating factors behind the strike. The Company's pre-election statements antedate all the bargaining; it is beyond belief that the Union would suddenly walk out of negotiations after many months because the Company had opposed it in an election over six months previously. The same is true of bargaining schedule delays. The evidence indicates that any disagreement over the scheduling of negotiating meetings occurred in the early stages of bargaining; not when the strike occurred. In fact, during the crucial bargaining just prior to the strike, the Company met the Union three times between February 7 and February 22, 1967.

Consequently, by process of elimination, if the Union's claim of walking out to protest Company bad faith is genuine, the "bad faith" which the Union thought it perceived must have come from the Company's bargaining proposals. But, these Company's proposals, especially standing alone, do not amount to, and cannot support, a finding of bad faith. Hence, there is no foundation for a conclusion that the strike was an unfair labor strike.

In any event there is no mention or explanation of the Board's current view of strike causation in the Supplemental Opinion.

II.

THE REASONS GIVEN BY THE BOARD CANNOT SUPPORT A FINDING OF BAD FAITH BARGAINING

Even if the Board's Supplemental Opinion has articulated the rationale for the Board's position, that opinion still cannot support a finding of bad faith bargaining or a finding that the strike of February 28 was an unfair labor practice strike. All of the "factors", either individually or collectively, as a matter of fact and law, are deficient to support the Board's conclusions.⁴

A. The Company's Bargaining Proposals Cannot Support the Inference of Bad Faith

As noted above, the Board has incorporated, as one of the "factors" in its decision, the Trial Examiner's finding that the Company's bargaining proposals "drastically curtailed the Union's representation rights." (A. 41; 77 LRRM at 1273). The Board did not, however, refer to any specific proposals of which it disapproved, save the Company's management rights provision.

One of the Company's proposals which the Examiner faulted was the Company's proposed "zipper clause", which sought only to recite that the collective bargaining agreement contained the entire agreement between the parties. This clause, commonly found in labor agreements, is designed to foreclose midterm disputes.⁵ The Board and Courts, while giving various meaning to such clauses,⁶

⁴ The Board's brief suggests that this Court's previous opinion has foreclosed discussion of the factors on which the Board specifically relies and has already determined that the Company's bargaining proposals were illegal (Board Br., pp. 31-34). We do not so read the Court's opinion. At the conclusion of the majority opinion, the Court remarked that "a re-evaluation of the entire controversy is required on remand . . ." 441 F.2d at 1012.

⁵ *Jacobs Manufacturing Co.*, 94 NLRB 1214, 28 LRRM 1162, enf'd, *NLRB v. Jacobs Manufacturing Co.*, 196 F.2d 680 (C.A. 2, 1952).

⁶ See, e.g., *NLRB v. C & C Plywood Corp.*, 385 U.S. 421 (1967). See also *NLRB v. Southern, Materials Co.*, — F.2d —, 77 LRRM 2814 (C.A. 4, 1971), where the Court upheld the legality of a similar zipper clause.

have never before suggested that such clauses are illegal or may be considered illegal even "in the context of the whole case."

The management rights clause about which the Board specifically complained is also unobjectionable. The Company's proposal was as follows:

"A. The management of the Company's plants and the direction of its working forces, including the right to establish new jobs, abolish or change existing jobs, increase or decrease the number of jobs, temporarily or permanently, change materials, processes, products, equipment, to subcontract any of the manufacturing, warehousing and delivery, to discontinue, temporarily or permanently, in whole or in part, its business of manufacturing and delivery, to increase or decrease the number of working hours per day or per week, shall be vested exclusively in the Company and not subject to arbitration.

* * * * *

"B. In addition to items mentioned in Paragraph "A", the Company reserves and retains in full and completely any and all management rights, prerogatives and privileges, except to the extent that such rights, prerogatives and privileges are specifically limited by this Agreement. Such management rights as the Company reserves in Paragraphs "A" and "B", and those rights which are not limited by this Agreement, shall not be subject to arbitration if this be provided for by this Agreement." (A. 98-99).

In other words, the Company proposal would have limited arbitration but still permit arbitration of any claimed violation of the Agreement.

It should be noted that there is no legal requirement to agree to any form of arbitration.⁷ Consequently, it is anomalous for the Board to cast doubt on the validity of

⁷ "For arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960).

a proposal exempting certain matters from arbitration, but allowing arbitration of claimed violations of the Agreement.

Furthermore, in *NLRB v. American National Insurance Co.*, the Supreme Court was faced with a Company management rights proposal which was broader than this.⁸ The Court held:

"Congress provided expressly that the Board should not pass upon the desirability of the substantive terms of labor agreements. Whether a contract should contain a clause fixing standards for such matters as work scheduling or should provide for more flexible treatment of such matters is an issue for determination across the bargaining table, not by the Board. If the latter approach is agreed upon, the extent of union and management participation in the administration of such matters is itself a condition of employment to be settled by bargaining." *NLRB v. American National Insurance Co.*, *supra*, at 408-409.

The Board has, in the past, dismissed complaints based on the adherence by a Company to bargaining positions strikingly similar to the one at bar. In *Procter & Gamble Manufacturing Co.*, 160 NLRB 334 (1966), the Company insisted throughout the negotiations on an equally broad management rights clause⁹ and a clause significantly

⁸ That proposal read as follows: "The right to select and hire, to promote to a better position, to discharge, demote or discipline for cause, and to maintain discipline and efficiency of employees and to determine the schedules of work is recognized by both union and company as the proper responsibility and prerogative of management to be held and exercised by the company, and while it is agreed that an employee feeling himself to have been aggrieved by any decision of the company in respect to such matters, or the union in his behalf, shall have the right to have such decision reviewed by top management officials of the company under the grievance machinery hereinafter set forth, it is further agreed that the final decision of the company made by such top management officials shall not be further reviewable by arbitration." 343 U.S. at 398.

⁹ The clause in that case provided:

"The Employer will continue exclusively to establish and change production schedules, to create new jobs and job classifications, to discontinue jobs and job classifications, to combine jobs and job classifications, to assign, re-assign, and re-arrange duties for jobs and job classifications, and to contract out work." 160 NLRB at 336, n. 3.

limiting the scope of issues that could be submitted to final and binding arbitration. Just as in the present case, the Company in the bargaining conceded that where an issue was deemed to be not arbitrable the Union could strike over such issue and the no-strike clause would be modified to that extent. In assessing those very similar contract proposals the Board itself in the *Procter & Gamble* case stated that:

"In this connection, it is well established that an employer's insistence upon management rights—limited arbitration provisions, which are mandatory subjects of collective bargaining, does not itself violate Section 8(a)(5)." *Id.* at 338.

As authority for this proposition the Board cited the Supreme Court decision in *NLRB v. American National Insurance Co.*, 343 U.S. 395 (1952), where the Court held that "... we reject the Board's holding that the bargaining for the management functions clause proposed by respondent was, *per se*, an unfair labor practice." *Id.* at 409.

The Examiner, and now the Board, castigate the proposals of the Company generally as "drastically curtailing the Union's representation rights", and now claim that the Board is entitled to infer bad faith from the Company's lawful bargaining proposals. The Courts have consistently rejected this argument.

The most recent instance is the Fifth Circuit's decision on *Chevron Oil Co. v. NLRB*, 442 F.2d 1067 (C.A. 5, 1971). There the Company insisted upon a broad management rights clause, a no-strike provision and a grievance procedure that did not provide for arbitration, and refused to concede at all on these issues. The Board held that the insistence on these provisions was a factor from which it could infer bad faith. The Court, however, after reviewing all the authorities, including the Supreme Court's recent *H. K. Porter* decision, concluded:

"In view of the principles stated above, we are unable to agree with the Board's contention that the Com-

pany's position with regard to the management rights, no-strike, no-arbitration clauses warrants a finding of bad faith. Nor can we agree with the Board's argument that the Company's rejection of the Union's proffered concessions and proposals evidences a refusal to bargain in good faith. The Act does not require an employer to abandon a position because of either the quantity or quality of concessions offered by the Union in the hope of securing that abandonment. *NLRB v. United Clay Mines Corp.*, 6th Cir. 1955, 219 F.2d 120." *Id.* at 1073.

See also *NLRB v. American National Insurance Co.*, 343 U.S. 395, 404-409 (1952); *NLRB v. Alva Allen Industries, Inc.*, 369 F.2d 310, 318 (C.A. 8, 1966); *NLRB v. Cummer-Graham Co.*, 279 F.2d 757, 759-760 (C.A. 5, 1960).

Furthermore, the contract clauses which the Board now condemns and from which it seeks to draw damaging inferences are far from atypical. They are, on the contrary, common grist of collective bargaining and have been accepted by many labor organizations in their agreements with major national corporations. For example, the prevalence of non-compulsory arbitration clauses enumerating management rights in major national collective bargaining agreements has been the subject of two studies by the United States Department of Labor.

In a 1966 study made by the United States Department of Labor, some 1,717 major agreements were analyzed. Of these some 108 agreements had no provision for grievance arbitration at all, and 46 contracts had a provision, such as the one in issue here, for arbitration by mutual consent. "Major Collective Bargaining Agreements, Arbitration Procedures", Bulletin No. 1425-6, United States Department of Labor, p. 5.

A similar study of management rights clauses by the Department of Labor found that of the 1,773 major agreements studied, 860 contained a formal statement of management rights. "Major Collective Bargaining Agree-

ments, Management Rights and Union-Management Cooperation," Bulletin No. 1425-5, U. S. Department of Labor, p. 5. In addition, this study makes the following observation on the various types of management rights clauses:

"Once the basic decision is reached to include a statement of rights in the agreement, a further determination has to be made concerning the form that the statement should take, i.e., whether it will consist only of a broad and general definition of rights (general statement) or contain an enumerated list of specific functions reserved to the employer (enumerated statement).

"Each form has its advocates. Those preferring the general statement argue that by enumerating rights important functions may be overlooked inadvertently. Should an issue involving an overlooked right subsequently reach arbitration, the arbitrator could reason that the absence of this right expressed the parties intent; therefore, the function could no longer be exercised by management unilaterally. On the other hand, supporters of enumerated statements have held that specific provisions clearly define the rights of management and thereby offer better protection against their erosion. Furthermore, by furnishing a definite guide to arbitrators, many such clauses, it is claimed, help to resolve disputes that may arise as to the interpretation or application of agreement terms.

"The latter argument seems to be the more compelling one, at least up to the time of this study. Enumerated statements, found in 713 agreements, prevailed by a wide margin over general statements found in 147 agreements."

The Board, as we have noted, seeks to draw support from this Court's statement that it might be legitimate for the Board to infer some degree of bad faith from insistence on a "particularly disadvantageous" Company proposal (Board Br., p. 33). We respectfully disagree with this concept if it is intended to suggest that the Board is empowered to pass judgment on the merits of a contract proposal made by either a company or a union. The

theory of collective bargaining as embodied in the Act leaves the resolution of this type of issue to the parties, not to the Board. We believe that the Court's reference to a "particularly disadvantageous proposal" was intended to describe a situation where the nature of the proposals was such as "to call into question the Company's willingness to sign any agreement." (441 F.2d at 1010).

In any event, as we have demonstrated, the Company's proposals were not of the extreme type which call into question its desire to negotiate to a final agreement. They were proposals of a type which have passed muster in the collective bargaining arena as well as before the Courts, and even before the Board.

In sum, the Board here is in error in relying upon legitimate Company contract proposals as a factor to support its allegation of bad faith bargaining.

B. The Company Did Not Fail To Cooperate in Scheduling Bargaining Sessions

The Board also relies, as a "factor" in its determination of bad faith, on the "Company's failure to cooperate with the Union in scheduling bargaining sessions." This finding is factually and legally in error.

This was an initial contract situation. The parties met on eleven occasions:

1. October 27, 1966
2. November 28, 1966
3. December 15, 1966
4. January 6, 1967
5. January 25, 1967
6. February 7, 1967
7. February 13, 1967
8. February 22, 1967

9. March 14, 1967
10. May 1, 1967
11. August 7, 1967

At the first scheduled meeting on October 27, 1966 the Union was unprepared to begin bargaining since the Union bargaining committee did not show up (A. 147, 424). The Union in fact waited a full month before requesting another meeting on November 28, 1966.¹⁰ At this meeting the Union went over the contract that it was proposing and asked the Company to submit a written counterproposal and to provide certain information with respect to the unit employees and the Company welfare plans. The Union witness testified that at the conclusion of the November 28, 1966 meeting he urged "the Company to meet as soon as possible, preferably in a succession of days" (A. 423).

The Board deprecates the necessity for time between the second and third meetings (Board Br., pp. 24-26). The Board overlooks the fact that not only did the Company have to prepare a complete counterproposal, but it had to gather certain specific information requested by the Union (A. 427). The Board's brief suggests that the only reason Company counsel was unwilling to meet before December 19 was his "busy schedule", but if that is true, this does not indicate that the reason for the delay stemmed from bad faith or from any planned strategy to frustrate an agreement.

The meeting of December 19, 1966 was largely devoted to an examination of the Company's counterproposal. At the conclusion of this meeting the chief Union negotiator (a different one than appeared at the November 28 meeting) testified that he sought to obtain a date from the

¹⁰ In past cases the Board has evaluated the reasonableness of the frequency of bargaining by reference to the Union's diligence in keeping its appointments. See *Vac-Art, Inc.*, 124 NLRB 989, 995 (1959).

chief Company negotiator for the next bargaining session. He testified that the Company negotiator failed to call him back (A. 439-440).

The relative insignificance of this incident, on which the Board relied heavily in its decision, is disclosed by the fact that a few days after the incident the Union negotiator called the Company negotiator and agreed on January 6, 1967 as a date for the next meeting.¹¹ This was only seventeen days after the December 19th meeting. In this interval was the week between Christmas and New Year's Day when even the most pressing business is usually suspended.¹²

One can search the record and find no indication following the meeting of December 19, 1966 that an accelerated scheduling of bargaining sessions after that date would have produced any breakthrough in the negotiations leading to an early agreement. A close scrutiny, in fact, of Union negotiator McCall's testimony on this point will show that his real complaint was not directed to the failure to meet sooner than January 6, 1967, but rather his irritation at what he considered to be Mr. Bowden's failure to return his telephone call after the bargaining on December 19.

The meeting on January 6, 1967 produced little movement on the outstanding issues by either party. On the crucial issue of arbitration, the meeting produced further disagreement (A. 155-156).

The Union witness testified that at the conclusion of this meeting he "encouraged the Company to meet with us as

¹¹ In *Pied Piper Shoe Corp.*, 172 NLRB No. 45, 68 LRRM 1310 (1968) the Board refused to find bad faith premised, *inter alia*, on the inability of Union representatives to reach Company counsel by telephone.

¹² See *Swift & Co., Inc.*, 124 NLRB 394, 396 (1959), where the Board held that a Company's refusal to meet for bargaining during the week between Christmas and New Year's Day was not unreasonable. Accord: *Chevron Oil Co. v. NLRB*, *supra*, 442 F.2d at 1071.

promptly as possible" (A. 475). Yet, these urgings were not accompanied by any indication of movement by either party on the critical issues of the negotiations. With the exception of the subject of insurance, the parties were merely beginning to repeat their positions. For this reason the Company suggested that the next meeting be scheduled at a time when the Company's insurance man could be present to explain the current Company insurance program (A. 475). That date was January 25, 1967. Again, this period of time does not appear unreasonable in all the circumstances.

There were no other complaints that bargaining meetings were not held promptly. Nor could there be. In spite of the continuing wide difference between the parties, they met on February 7, 1967—and on February 13, 1967.

It is also worthy of note that in the meeting of February 13, after the Company had made major concessions on February 7, the Union failed to send its two leading negotiators—Edwards and McCall—to the meeting (A. 179). This was a signal—clearly understood by all participants—that the Union had decided against a resolution of the dispute at the bargaining table and was preparing for a strike.

At that point, if not before, the parties were at an impasse, and the strike began on February 28, 1967.

In all the circumstances it is apparent that the Company met with the Union at reasonable times, and did not delay the negotiations.

The Board's brief attributes what it conceives to be delays in the bargaining to the fact that the Company's chief negotiator was an attorney with a heavy workload, but this is evidence that the delays were not due to a deliberate stalling tactic. The Board's brief cites *NLRB v. Exchange Parts Co.*, 339 F.2d 829 (C.A. 5, 1965), for the proposition that an employer's duty to meet and bargain with the Union at reasonable intervals cannot be avoided simply because

the Company's chief negotiator is a busy attorney (Bd. Br., p. 26-28). But, as *Exchange Parts* makes clear, the test is whether the Company met with the Union at reasonable times and intervals under the circumstances. Any delay in scheduling meetings until December 15, January 6, and January 25 was occasioned by legitimate reasons. On the other hand, the Union, responsible for over a month's initial delay in the bargain, offered no excuse and was asked for none. As the Fifth Circuit has recently commented under similar circumstances:

"The month's delay between the meetings on December 14 and January 17 is regrettable, but after considering it in light of contemporaneous events, we do not believe it constitutes evidence that Chevron refused to bargain in good faith. In November, December and early January Chevron was deeply involved in the negotiations that ultimately settled the terms of the nationwide oil industry contract. Ed Johannessen, the Company's primary negotiator during the Snyder sessions, was participating in negotiations with unions in San Francisco and Los Angeles in addition to compiling a counter-proposal to Local 826's proffered contract. The Christmas-New Year season contributed to the delay, as did a change in personnel of the Company team negotiating the Snyder contract. In sum, we can accuse the Company of having too many irons in the fire during the time in question, but we cannot conclude that it pursued a deliberate course of delay." *Chevron Oil Company v. NLRB*, 442 F.2d at 1071. (footnote omitted).

While the Board might be justified in criticizing the Company for delay, it seems unreasonable to elevate this aspect of the bargaining beyond proportion and denominate it as significant evidence of overall bad faith.

While the citation of cases in this area is difficult since the circumstances of each case are somewhat different, the Board itself has on past occasions specifically held that a similar number of bargaining sessions held within a similar period of time as is involved in this case has evidenced the

willingness of the Company to meet at reasonable times. See *Texas Industries, Inc.*, 140 NLRB 527 (1963) (11 meetings in 4 months found reasonable); *Charles E. Honaker*, 147 NLRB 1184 (1964) (11 meetings in five and one-half months found reasonable).¹³

C. The Board Is Unwarranted in Using the Company's Alleged Pre-Election Conduct To Taint the Negotiations

A factor on which the Board relies in concluding that the Company bargained in bad faith was the contradicted testimony of a few employees that they were told in the course of the pre-election campaign many months prior to the bargaining negotiations that if the Union won the Company would never sign a contract.

The Board did not take into account the wholly different context and atmosphere between a hotly contested election campaign and the subsequent bargaining itself. In evaluating bargaining, there is a little or no probative value in statements made during an election campaign that preceded the bargaining by almost a year.

This is especially true where the alleged pre-election conduct consists of oral statements attributed to but denied by managerial personnel. It is easy to misconstrue and misinterpret oral statements and give them a particular gloss, especially when the testimony is given over a year later and recollections are faulty. If testimony of this kind is

¹³ See also *NLRB v. Newberry Equipment Co.*, 401 F.2d 604, 607 (C.A. 8, 1968) (13 meetings in 6 months), where the Court through then Judge Blackman, stated:

"The union was certified June 11, 1964. The first bargaining session was eleven days later, on June 22. Following this there was at least one meeting every calendar month [for two to three hours]. There was never as much as a month between meetings. There was no long delay between sessions, no indefinite postponement, no refusal to attend, and no nonappearance factors which appear in many of the refusal-to-bargain cases. This is not unreasonable continuity . . ."

Accord: Waycross Journal-Herald, Inc., 157 NLRB 1486, 1496-1500 (1966).

to be given probative weight in judging the good faith of company negotiators in the subsequent bargaining, the company necessarily enters into the bargaining with two or even three strikes against it.

The proper evaluation of such evidence, even where the pre-election conduct was found to be an unfair labor practice, was given by Judge Sobeloff in *NLRB v. Stevenson Brick & Block Co.*, 393 F.2d 234 (C.A. 4, 1968):

"The Trial Examiner further predicated his decision upon the employer's unfair labor practices committed more than seven months before the bargaining sessions began. Such remote conduct has little probative value in determining the employer's bargaining intentions. This misconduct cannot, therefore, support the charge of refusing to bargain in violation of section 8(a)(5) without some showing of bad faith at the negotiations themselves. As indicated above, no such showing has been made." 393 F.2d at 238.

The testimony relied upon by the Board in concluding that the Company had announced during the election campaign its determination not to enter into a contract with the Union is, in any event, highly suspect. For the Board to arrive at its conclusion concerning the Company's pre-election conduct it required crediting of *all* the testimony of *all* the Union witnesses and discrediting *all* of the testimony of *all* of the Company witnesses. It would unduly extend this brief to point up all the inherent deficiencies and incredibility of the employee testimony credited. We would, however, respectfully suggest that the Court read the credited testimony of Lephus Felton (A. 280-287) to obtain a flavor of the kind of evidence relied upon by the Trial Examiner and Board in concluding that the Company has announced its intent to refuse to bargain during the election campaign.¹⁴

¹⁴ Felton's rambling, sometimes incoherent, testimony was punctuated by such observations as "You get kind of nervous when you're [on the witness stand] and . . . you're liable to say anything . . ." and "Now, you're confusing me, now" (to Company counsel). A. 285, 287.

It is equally instructive to note the Board's reliance (Bd. Br., p. 24) on the testimony of employee Withers regarding a speech by the Company President. His testimony was contradicted by another employee witness who testified that the President's speech followed exactly a written script which the witness followed as the President spoke and which the witness initialled after the speech (A. 525-526). In addition, Withers admitted that he might have mixed the speech up with another one, that he didn't hear "too good" and ultimately that he was reporting what "the boys" told him the Company President said (A. 252).

Finally, even if the evidence, upon which the Board relies, were worthy of belief, events which occur outside the Section 10(b) time period are not entitled to weight to establish a violation within the 10(b) period. *Local Lodge No. 1424, IAM v. NLRB*, 362 U.S. 411, 416-417 (1960); *NLRB v. MacMillan Ring-Free Oil Co.*, 394 F.2d 26, 33 (C.A. 9, 1968), *cert. denied*, 393 U.S. 914; *Gulfcoast Transit Co. v. NLRB*, 332 F.2d 28, 33 (C.A. 4, 1964), *cert. denied*, 379 U.S. 921.

D. The Company's Responses to the Union's Request for Wage Data Do Not Support a Finding of Bad Faith Bargaining

A fourth factor upon which the Board relies to bolster its renewed finding of bad faith is the Company's alleged "failure to supply the Union with wage data within a reasonable time after its request therefor." Because of the failure of the Board to heed this Court's request for some analysis, its Supplemental Opinion does not describe which wage data it has in mind; but the Board's brief (pp. 28-29) attempts to fill the gap by focusing on two incidents: (1) the delay in granting the request for an area wage survey; and (2) failure to deliver a schedule of wage rates paid to striker replacements.

Because these events occurred subsequent to the strike, they are irrelevant to the issue of whether or not the strike

was occasioned by the Company's alleged refusal to bargain. We now show that these events also will not support a finding of bad faith bargaining.

1. The Wage Survey Data.

The record shows that on January 25, 1967 the Company made a wage offer to the Union to increase the rates for four job classifications and that this proposal was based on "some recent wage adjustments in the area" (A. 165).

On May 31, 1967, some four months after the offer was made and three months after the strike began, the Union sent the Company a letter stating, *inter alia*:

"Please send me the information concerning the Area Wage Rate Study made by the Company which prompted the offer of raises for employees of the following scheduled jobs: Electric Furnace, Pattern Makers, Machinists and Maintenance Mechanics." (A. 148).

The next bargaining session was not until August 7, 1967. Right after that session the Union sent a letter to the Company reiterating its request for the information (A. 145-146). On August 15, 1967 the Company furnished the Union the information it sought (A. 74-77).

The Board claims in these circumstances that a two month delay in forwarding the wage survey information constituted a violation of Section 8(a)(5). This finding overlooks the fact that the Union waited four months to make the request; that no bargaining sessions had taken place after May 31, 1967 until August 7, 1967; that there was a complete lack of any urgency in furnishing this information; and finally that when the request was reiterated on August 8, 1967 it was promptly complied with on August 15, 1967.

In any event it is to be noted that the Trial Examiner, and the Board in its original opinion, found "no connection" between this alleged unfair labor practice and the duration of the strike (A. 46).

2. Names, Classifications and Rates of Pay of Striker Replacements.

In the same letter of May 31, 1967 requesting area wage survey information, the Union stated:

"Reports have reached me that the above named company is presently paying certain strike breakers at rates of pay higher than those paid striking employees who performed the same work prior to the strike.

"Please forward me the names, job titles, and rates of pay for each employee of the bargaining unit who is presently employed" (A. 139-140).

On July 27, 1967—some ten days after it officially terminated the strike—the Union reiterated this request (A. 142-143). On July 31, 1967 the Company wrote stating:

"[W]e have been unable to find any instance in which any current employee is receiving any rate in excess of the rate for the job the strikers received before they participated in the strike." (A. 144).

On August 8, 1967, after the bargaining on August 7, 1967, the Union wrote to the Company again requesting:

"(1) The names and rate of pay of each employee presently at work, along with the job to which they are assigned. I made this request because of substantial reports that striker replacements are being paid more in some instances than were the strikers who were replaced." (A. 146).

The Company responded on August 15, 1967 reiterating the position it took in the July 31, 1967 letter that no striker replacements were receiving rates of pay higher than the striking employees received prior to the strike. The letter offered to supply such information as to any striker replacement thought by the Union to be paid more than the striker prior to the strike. In addition, the letter of August 15, 1967 continued:

"In view of the fact that we had a large number of instances involving violence and intimidation by strik-

ers against employees working, we are hesitant to furnish the names of employees to you for this reason." (A. 75).

The Trial Examiner found "nothing improper" in the Company's conduct in this regard (A. 45). The Board, however, reversed the Trial Examiner on this point, in its original opinion, holding that:

"Absent more positive evidence of employee harassment, the Company was not relieved of its obligation to furnish such information and its refusal to do so is an additional violation of Section 8(a)(5)" (A. 59).

The Board thus ducked the primary reason why the Company declined to give the Union the information it sought. Inasmuch as no striker replacement was receiving a rate of pay in excess of what the striker was receiving before the strike, the information sought by the Union was irrelevant to its stated purpose. Moreover, the Company offered to give such information as to any striker replacement whom the Union believed to be receiving the higher rate. The Union never followed this up, even though it professed to have "substantial reports" of such instances.

Secondly, the Board's decision places an unfair burden on a Company to make an affirmative showing of Union misconduct before it can exercise the simple prudence represented by withholding the names of striker replacements from a striking union. The rule of *Webster Outdoor Advertising Co.*, 170 NLRB No. 144, 67 LRRM 1589 (1968),¹⁵ authorizing a refusal to disclose to the striking Union names of striker replacements should not be limited to instances where antecedent threats and harassments of replacements have been proved. The rule sought by the Board in this case would require that the employer have proof that the harassments have occurred before it could

¹⁵ *Enf'd sub nom., Sign & Pictorial Union, Local 1175 v. NLRB*, 136 U.S. App. D.C. 144, 419 F.2d 726 (1969).

afford the replacements the simple protection of confidentiality. Such a rule would be self-defeating.

In addition, the Company attempted to introduce evidence of the violence that marred this strike, but was prevented from doing so by the Trial Examiner, who found that:

"If there is a question of misconduct, it would go to the issue of reinstatement, I do not think it is before us at the present time" (Tr. 112).

Despite this ruling, the Union witness Edwards admitted that during the strike some six strikers were convicted of strike misconduct (A. 500). Contrary to the Board's decision, therefore, there was evidence of striker misconduct in the record.

As in the case of the wage survey information, the Board found no connection between this alleged unfair labor practice and the duration of the strike (A. 58-59).

3. Conclusions As To Supplying Wage Data.

The Board is attempting to discredit the Company's entire bargaining posture and impugn the Company's bargaining motives by relying on requests for information which occurred three months after the Union struck and after all but the last bargaining session between the parties had been held. Hence, as a practical matter, the Company's alleged illegal conduct could have infected, at most, the atmosphere of the last bargaining session long after the inception of the strike. Furthermore, it is obvious that the information which the Union requested was not considered by it to be of overriding significance as it waited almost two months after the first request to renew it (A. 142-143). The Company quickly supplied the area wage rate study after the Union's renewed request following the last bargaining session (A. 74-77 145-146); and it informed the Union twice that it could find no striker replacements being

paid at a higher rate, but offered to forward specific information on specific employees. The Union never replied.

Assuming, *arguendo*, that the Company should have answered the Union more promptly, there is nothing in the record to suggest that the Company's delay in furnishing data which the Union obviously regarded lightly in any way was designed to, or did in fact, impede the last negotiating session. There is nothing to suggest that the Union needed, or desired to have this information in order to prepare for the last bargaining session. There is nothing, therefore, from which the Board may reasonably infer that this Company action represented evidence of a determination on its part not to reach an agreement. *Cf. NLRB v. Insurance Agents International Union*, 361 U.S. 477 (1960). Certainly, none of this had anything to do with causing the strike which had taken place months before.

E. The Company's Alleged Promise of Wage Increases Cannot Support a Finding of Bad Faith

The Board also relies as one of its five elements of bad faith upon alleged "promises of wage increases to employees who did not support the strike". This finding, however, rests on the slenderest of threads: testimony, stoutly denied, that one supervisor who was not part of the Company's bargaining team told five or six employees out of a total work force of approximately two hundred, right after the strike commenced, that those who did not strike would immediately receive a ten cent wage increase (Board Br. p. 12). This Board finding, as noted above, *supra* pp. 6, 9 cannot support a conclusion that the Union's strike was an unfair labor practice strike since the strike was already in progress; nor can it support the conclusion that the Company bargained in bad faith.¹⁶

¹⁶ This approach, it should be noted, is in direct contrast to that taken by the Trial Examiner. The Examiner at the hearing refused to "bind the Company, with respect to bargaining position" because of statements of minor supervisors made previous to the bargaining sessions (A. 512-513).

The finding that such a promise was made was based on the testimony of two employees—Alexander Brown and Elijah Fishburne—who testified that George Peacock on the day of the strike promised them a “dime” raise (A. 262-266; 370-372). Peacock unequivocally denied making such a promise (A. 361-362). The Trial Examiner failed even to allude to the fact that there was a conflict in the evidence.

This testimony is, under any objective standard, inherently incredible. With a Union demand of a 20 cent per hour raise on the table and a Company offer of 8 cents per hour, it is hard to imagine how an offer of ten cents to a few non-strikers would have convinced persons who would have otherwise gone on strike to stay at work. It is an incredibly weak promise of benefit for remaining at work during the strike.

In addition, the record fails to show any wage increases for employees who chose to work during the strike until the publicly announced increase of 8 cents an hour on October 2, 1967. The Board would have the Court conclude that the Company promised the nonstriking employees a “dime” increase on February 28, 1967, but gave them nothing at all until October 2, 1967—seven months later—when it gave them 8 cents. All this strains credulity.

While the Trial Examiner found that this promise was made, he expressly ruled it out as a contributing factor in causing or prolonging the strike (A. 46).

In any event, an incident such as this is a very thin reed upon which to predicate a finding of bad faith. *Chevron Oil Co. v. NLRB*, *supra*, 442 F.2d 1071-1072; *Southwestern Pipe, Inc. v. NLRB*, — F.2d —, 77 LRRM 2317, 2324-2325 (C.A. 5, 1971); *Sign & Pictorial Union, Local 1175*, 136 U.S. App. D.C. 144, 419 F.2d 726 (1969); *NLRB v. Reeves Broadcasting Corp.*, 336 F.2d 590, 593 (C.A. 4, 1964).

F. The Board Ignored Evidence Which Affirmatively Demonstrated the Company's Good Faith

Although not required by the Act to do so, the Company did introduce evidence to support its claim that it was attempting in good faith to reach an agreement. The Board ignored evidence showing that this Company has had an unblemished record of compliance with the National Labor Relations Act, even though its employees have been union-represented in the past and even though the Company underwent a major strike in 1958 (A. 523). In fact, no unfair labor practice charge has ever been filed against this Company before the instant case.

Furthermore, during the negotiations the Company made several concessions, although not legally obligated to do so, and reached agreement on many issues with the Union. In the course of the bargaining the Company made significant concessions with respect to: (1) rates of pay; (2) shift differential; (3) insurance benefits; (4) vacations; (5) reporting pay; (6) seniority; (7) the check-off; and other matters.

The Company began with a comprehensive counterproposal and modified its position on many items. It also advanced cogent and reasonable arguments for the positions on which it was firm. The Board has often considered the making of counterproposals, concessions during bargaining, and reasonable explanations for positions taken as evidence of good faith. See, e.g., *Standard Trucking Co.*, 183 NLRB No. 67, 74 LRRM 1553, 1561 (1970); *Procter & Gamble Mfg. Co.*, 160 NLRB 334, 338 (1966). The same consideration should apply to this employer.

CONCLUSION

We respectfully submit that the Court should deny enforcement to the Board's decision and order.

Respectfully submitted,

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